

Minutes of the workshop of the Town Board of the Town of Durham held July 7, 2009 at the Town Building in Oak Hill, NY.

Present: Gary Hulbert - Supervisor
 Jerry Cunningham – Councilperson
 Jodi Wood – Councilperson
 William Carr – Councilperson
 Linda Sutton – Councilperson

Secretary: Chris Kohrs – Town Clerk

Others: Tal Rappleyea – Attorney
 Wes Moore – Highway Superintendent
 Larry Cooke – Code Enforcement Officer

Supervisor Hulbert called the meeting to order at 7:34 p.m. with seventy people in attendance.

Supervisor Hulbert shared with everyone the plaque presented to the Town Board by Greene County Soil and Water. The plaque is in appreciation of the support received from the Town Highway Department in the restoration of the Ten Mile Creek.

Supervisor Hulbert reminded everyone Oak Hill Days Celebration will be July 25.

Ms. Wood motioned to approve a bill for the fireworks at the Greene County Youth Fair for \$300.00, seconded by Mr. Carr. All were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Mr. Carr motioned to approve the purchase of an air conditioner for the court/police office, seconded by Ms. Wood. All were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Ms. Bertone, owner of Tuscany Meadows mobile home park urged the Town Board to reconsider her request to relocate the residents' mailbox receptacle onto the Town's property. She stated the reason for the request is as the roadway in the park has been maintained and improved and the current location for the receptacle sits lower than the road bed creating a build up of ice and snow in the winter months. This has created a hazardous situation for the residents. Mr. Snyder, a resident of the park, explained the concern for the safety of the residents if the current problem was not rectified. Additional discussion ensued with concerns for liability in case of injury and additional locations considered, A survey is needed to determine fair market value. The board took no action and will perform an on site inspection to review the current situation and options on July 21, 2009 prior to the meeting. Revisit this topic at the August 4, 2009 workshop.

Mr. Rappleyea summarized the status of the public hearing for Cell Tower Application CT2008-01. The public hearing closed to verbal comment on June 16 but left open for written comments until July 7, 2009. Now the board and attorney will review and analyze all the documentation received as it pertains to town law and the comprehensive

plan. There will be a prepared resolution for the July 21, meeting as well as the required environmental review form. Supervisor Hulbert stated there were seven alternate sites considered and the study indicated that this site gave the best coverage.

Proof of notice having been furnished the public hearing for the Local Law #3 of 2009 7:50 was called to order at 8:30 p.m. by Supervisor Hulbert.

Attorney Rappleyea explained this Local Law repeals Local Law #4 of 2007, which was required by NYS Department of State required of all towns. It gave the towns the ability to enforce State building laws. Some of the definitions in the state building law conflicted with the town definitions i.e.) code enforcement officer and building inspector. Attorney Rappleyea has melded the two laws, definitions and job descriptions into one law. The language in Local Law #3 of 2009 automatically repeals Local Law #4 of 2007 once Local Law #3 of 2009 is approved.

All persons desiring to be heard having been heard the public hearing was closed.

Supervisor Hulbert closed the public hearing for Local Law #3 of 2009 and opened the work session at 7:52 p.m.

Resolution 2009-10 Adopting Local Law #3 of 2009

Mr. Cunningham moved to approve the following:

**TOWN OF DURHAM
LOCAL LAW #3 OF 2009
A LOCAL LAW PROVIDING FOR THE
ADMINISTRATION AND ENFORCEMENT OF THE
NEW YORK STATE UNIFORM FIRE PREVENTION AND BUILDING CODE**

Be it enacted by the Town Board of the Town of Durham, in the County of Greene, as follows:

SECTION 1. PURPOSE AND INTENT

This local law provides for the administration and enforcement of the New York State Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code) in this Town. This local law is adopted pursuant to section 10 of the Municipal Home Rule Law. Except as otherwise provided in the Uniform Code, other state law, or other section of this local law, all buildings, structures, and premises, regardless of use or occupancy, are subject to the provisions this local law.

SECTION 2. DEFINITIONS

In this local law:

“Building Permit” shall mean a permit issued pursuant to section 4 of this local law. The term shall also include a Building Permit, which is renewed, amended or extended pursuant to any provision of this local law.

“Certificate of Occupancy”/“Certificate of Compliance”] shall mean a certificate issued pursuant to subdivision (b) of section 7 of this local law.

“Code Enforcement Officer” shall mean the Code Enforcement Officer appointed pursuant to subdivision (c) of section 3 of this local law.

“Code Enforcement Personnel” shall include the Building Inspector and all Code Enforcement Officers.

“Compliance Order” shall mean an order issued by the Building Inspector/Code Enforcement Officer pursuant to subdivision (a) of section 15 of this local law.

“Energy Code” shall mean the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time.

“Building Inspector” shall mean an inspector appointed pursuant to subdivision (b) of section 3 of this local law.

“Operating Permit” shall mean a permit issued pursuant to section 10 of this local law. The term “Operating Permit” shall also include an Operating Permit, which is renewed, amended or extended pursuant to any provision of this local law.

“Permit Holder” shall mean the Person to whom a Building Permit has been issued.

“Person” shall include an individual, corporation, limited liability company, partnership, limited partnership, business trust, estate, trust, association, or any other legal or commercial entity of any kind or description.

“Stop Work Order” shall mean an order issued pursuant to section 6 of this local law.

“Temporary Certificate” shall mean a certificate issued pursuant to subdivision (d) of section 7 herein.

“Town” shall mean the Town of Durham.

“Uniform Code” shall mean the New York State Uniform Fire Prevention and Building Code, including but not limited to the Electrical Code, Residential Code, Plumbing Code, and Mechanical Code, as currently in effect and as hereafter amended from time to time.

SECTION 3. BUILDING INSPECTOR AND CODE ENFORCEMENT OFFICER

(a) The offices of the Town Building Inspector and the Code Enforcement Officer are hereby created.

(b) The Building Inspector shall except as otherwise specifically provided by law, ordinance, rule or regulation, or except as herein otherwise provided, the Building Inspector shall administer and inspect the provisions of laws, ordinances, rules and regulations applicable to the plans, specifications, or permits for the construction, alteration and repair of buildings and structures, and the installation and use of materials and equipment therein, and the location, use an occupancy thereof.

The building Inspector shall receive applications for the erection and alteration of buildings and structures or parts thereof and shall examine the premises for which such application had been received, plans approved, or such permits have been issued for the purpose of insuring compliance with the laws, ordinances, rules and regulations governing building construction or alteration, including but not limited to plans for construction involving structural design, reinforced concrete, or structural steel. The Building Inspector position involves a high degree of responsibility since error in judgment might endanger the lives of inhabitants. General supervision should be received from a licensed professional engineer or architect insofar as structural features of the construction are involved. Supervision should also be received from the Town Board.

The Building Inspector shall issue in writing to the municipality all appropriate notices to orders to remove illegal or unsafe conditions, to require the necessary safe guards during construction and to insure compliance during the entire course of construction with the requirements of such laws, ordinances, rules and regulations, and such notices or orders which may be served upon the property owner or his agent personally by the Town of Durham or by sending by certified mail, a copy of such order to the owner or his agent at the address set forth in the application for permission for the construction or alteration of such building, and by posting the same upon a conspicuous place on the premises to which the notice applies. The Building Inspector shall make all inspections that are necessary or proper for the carrying out of the duties of the office.

Whenever the same may be appropriate to determine compliance with the provisions of applicable laws, ordinances, rules or regulations covering building construction or alteration, the Building Inspector may, in his or her discretion, accept and rely upon a written report of tests in the field by experienced, professional persons or by accredited authoritative testing laboratories or service and inspection bureaus or agencies.

The Building Inspector may issue a certificate of occupancy where appropriate for a building constructed or altered pursuant to the New York State Fire Prevention and Building Code and Local Law #2 of 1997, of the Town of Durham Building Law which certificate shall certify that the building conforms to the requirements of the State Uniform Code and other applicable laws. The Building Inspector shall examine or cause to be examined all applications for permits and the documents filed therewith. The Building Inspector shall then approve or disapprove the application.

The Building Inspector shall complete inspections and/or revoke a permit pursuant in accordance with the New York State Fire Prevention and Building Code and Local Law #2 of 1997, of the Town of Durham Building Law.

Whenever the Building Inspector has reasonable grounds to believe that the work on any building or structure is being performed in violation of the provision of the applicable building laws, ordinances, rules or regulations, or not in conformity with the provisions of an application, or in an unsafe and dangerous manner, he shall notify the owner or owner's agent of the property to suspend all work and suspend all building activities until the stop order has been rescinded. Such order and notice shall appear in

writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him, or by posting the same upon a conspicuous portion of the building where the work is being performed and sending a copy of the same to him by certified mail at the address set forth in the building permit application of such building, to be mailed on the same day as the stop order is issued.

The Building Inspector shall keep permanent official records of all transactions and activities conducted by him or her including all applications received, plans approved, permits and certificates issued, fees charged and collected, inspection reports, all rules and regulations promulgated by the municipality, and notices and orders issued. All such reports shall be public information open to public inspection during normal business hours and shall be filed in the office of the Clerk of the Town of Durham and shall be reviewed by the Town Board annually or more often at their discretion.

Whenever the Building Inspector finds a building or structure, or part thereof, to be an imminent danger to life and safety of the public, the Town of Durham may cause it to be demolished and removed or may cause work to be done in and about the building or structure as may be necessary to remove the danger. Upon such finding, the Building Inspector shall refer the matter to the Code Enforcement Officer for completion of the process in accordance with the aforementioned Local Law #3 of 1997.

Thorough knowledge of modern practices, principles, materials and tools used in building construction; good knowledge of building trades; good knowledge of the State Uniform Fire Prevention and Building Code and the local Zoning Code; good knowledge of the principles of fire prevention; ability to write clear and concise reports and to maintain records in an orderly manner; ability to establish and maintain cooperative relationships with other public officials, building contractors and the general public; ability to read and interpret plans and specifications; ability to be firm but courteous; honesty; integrity; thoroughness; tact; good judgment; good physical condition commensurate with the demands of the position.

(c) The Code Enforcement Officer shall enforce all provisions of New York State Uniform Fire Prevention and Building Codes and other codes, laws, rules and regulations pertaining to the construction or alteration of buildings and structures, site plan review, mass gatherings, subdivisions and other Town laws. The Code Enforcement Officer shall report directly to the Town Supervisor and the Town Building Inspector. He/she shall prepare a report to be submitted each month at the Town Board meeting.

The Code Enforcement Officer shall prepare rules and regulations and updated application forms for approval by the Town Board to be used in the administration and enforcement of the various Town Local Laws, including but not limited to the Subdivision, Broadcast and Communications Tower Siting, Sewage Disposal, Alarm Devices and Systems, Dog Control, Junkyard, Landfill, Mobile Home Parks, Unsafe Buildings Local Laws. Upon request of the Building Inspector, the Code Enforcement Officer shall assist in the administration and enforcement of the Flood Prevention, Historic Preservation and Building Local Laws of the Town of Durham.

The Code Enforcement Officer shall receive referrals from the Building Inspector, upon his own investigation, upon a complaint from the public or any other Town Official and investigate and prosecute any violations of the New York State Code and the laws of the Town of Durham in accordance with Section 383 of the Article 18 of the Executive Law of the State of New York, by way of, but not limited to:

- 1) It shall be unlawful for any person, firm or corporation, to construct, alter, repair, move equip, use of occupy any building or structure or portion thereof in violation of any provision of law or ordinances, as well as any rule or regulation promulgated by the Town of Durham in accordance with applicable laws, or fail in any manner to construct, alter, use of occupy any building or structures or part thereof in a manner not permitted by an approved building permit or certificate of occupancy.
- 2) Any person who shall fail to comply with a written order within the time fixed for compliance therewith, and construction superintendents or their agents, or any person taking part or assisting in the construction or use of the building who shall knowingly violate any of the applicable provisions of law, or any lawful order, notice, directive, permit or certificate of the Inspector made there under shall be punishable by fine or imprisonment or both. Each week that a violation continues shall be deemed a separate offense.
- 3) Violation orders shall be in writing; shall identify the property or premises shall specify the violation and remedial action to be taken; shall provide a reasonable time limit for compliance; and shall state the time within which an appeal may be taken.
- 4) Violation orders may be served by personal service; by mailing by registered or certified mail; or by posting a copy thereof in a conspicuous place on the premises and by mailing a copy thereof to the mailing address of the applicant or a designated agent on the same day as posted.
- 5) In case the owner, lessor, occupant or the agent of any of them shall fail, neglect, or refuse to remove, eliminate or abate the violation within 30 days, the matter shall be referred to the Town Attorney of the Town of Durham for legal action.

The Code Enforcement Officer shall receive referrals from the Building Inspector and enforce any violations of Town of Durham may require the occupants of any such building or structure, or part thereof, to vacate the premises forthwith. No person shall use or occupy such building or structure or part thereof, until it is made safe.

(d) The Building Inspector and the Code Enforcement Officer shall be appointed by the Town Board. Each shall possess background experience related to building construction or fire prevention and shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and the Code Enforcement Officer shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated there under and in accordance with the job descriptions as adopted by the Town Board of Town of Durham.

(e) In the event that the Building Inspector or Code Enforcement Officer are unable to serve as such for any reason, an individual shall be appointed by the Town Board to serve as the Acting official. The Acting official shall, during the term of his or her appointment, exercise all powers and fulfill all duties conferred upon the position by this local law and the duties as adopted by the Town Board of the Town of Durham.

(f) One or more Code Enforcement Officers may be appointed by the Town Board to act under the supervision and direction of the Building Inspector and to assist the Building Inspector in the exercise of the powers and fulfillment of the duties conferred upon the positions by this local law and the duties and policies adopted by the Town Board. Each official shall, within the time prescribed by law, obtain such basic training, in-service training, advanced in-service training and other training as the State of New York shall require for code enforcement personnel, and each official shall obtain certification from the State Fire Administrator pursuant to the Executive Law and the regulations promulgated there under.

(g) The compensation for the Building Inspector and Code Enforcement Officer shall be fixed from time to time by the Town Board of this Town.

SECTION 4. BUILDING PERMITS.

(a) Building Permits Required. Except as otherwise provided in subdivision (b) of this section, a Building Permit shall be required for any work which must conform to the Uniform Code and/or the Energy Code, including, but not limited to, the construction, enlargement, alteration, improvement, removal, relocation or demolition of any building or structure or any portion thereof, and the installation of a solid fuel burning heating appliance, chimney or flue in or attached to any dwelling unit. No Person shall commence any work for which a Building Permit is required without first having obtained a Building Permit from the Building Inspector/Code Enforcement Officer.

(b) Exemptions. No Building Permit shall be required for work in any of the following categories:

(1) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet (13.88 square meters);

(2) installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(3) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;

(4) installation of fences which are not part of an enclosure surrounding a swimming pool;

(5) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;

(6) construction of temporary motion picture, television and theater stage sets/scenery;

(7) installation of window awnings supported by an exterior wall of a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(8) installation of partitions or movable cases less than 5'-9" in height;

(9) painting, wallpapering, tiling, carpeting, or other similar finish work;

(10) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;

(11) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; or

(12) repairs, provided that such repairs do not involve (i) the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component; (ii) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress; (iii) the enlargement, alteration, replacement or relocation of any building system; or (iv) the removal from service of all or part of a fire protection system for any period of time.

(c) Exemption not deemed authorization to perform non-compliant work. The exemption from the requirement to obtain a building permit for work in any category set forth in subdivision (b) of this section shall not be deemed an authorization for work to be performed in violation of the Uniform Code or the Energy Code.

(d) Applications for Building Permits. Applications for a Building Permit shall be made in writing on a form provided by or otherwise acceptable to the Building Inspector. The application shall be signed by the owner of the property where the work is to be performed or an authorized agent of the owner. The application shall include such information as the Building Inspector deems sufficient to permit a determination by the Building Inspector that the intended work complies with all applicable requirements of the Uniform Code and the Energy Code. The application shall include or be accompanied by the following information and documentation:

(1) a description of the proposed work;

(2) the tax map number and the street address of the premises where the work is to be performed;

(3) the occupancy classification of any affected building or structure;

(4) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and

(5) at least 2 sets of construction documents (drawings and/or specifications) which (i) define the scope of the proposed work; (ii) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law; (iii) indicate with sufficient clarity and detail the nature and extent

of the work proposed; (iv) substantiate that the proposed work will comply with the Uniform Code and the Energy Code; and (v) where applicable, include a site plan that shows any existing and proposed buildings and structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the buildings and structures and the lot lines.

(e) Construction documents. Construction documents will not be accepted as part of an application for a Building Permit unless they satisfy the requirements set forth in paragraph (5) of subdivision (d) of this section. Construction documents which are accepted as part of the application for a Building Permit shall be marked as accepted by the Building Inspector in writing or by stamp. One set of the accepted construction documents shall be retained by the Building Inspector, and one set of the accepted construction documents shall be returned to the applicant to be kept at the work site so as to be available for use by the Code Enforcement Personnel. However, the return of a set of accepted construction documents to the applicant shall not be construed as authorization to commence work, nor as an indication that a Building Permit will be issued. Work shall not be commenced until and unless a Building Permit is issued.

(f) Issuance of Building Permits. An application for a Building Permit shall be examined to ascertain whether the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code. The Building Inspector shall issue a Building Permit if the proposed work is in compliance with the applicable requirements of the Uniform Code and Energy Code.

(g) Building Permits to be displayed. Building permits shall be visibly displayed at the work site and shall remain visible until the authorized work has been completed.

(h) Work to be in accordance with construction documents. All work shall be performed in accordance with the construction documents which were submitted with and accepted as part of the application for the Building Permit. The Building Permit shall contain such a directive. The Permit Holder shall immediately notify the Building Inspector of any change occurring during the course of the work. The Building Permit shall contain such a directive. If the Building Inspector determines that such change warrants a new or amended Building Permit, such change shall not be made until and unless a new or amended Building Permit reflecting such change is issued.

(i) Time limits. Building Permits shall become invalid unless the authorized work is commenced within [6] months following the date of issuance. Building Permits shall expire [12] months after the date of issuance. A Building Permit which has become invalid or which has expired pursuant to this subdivision may be renewed upon application by the Permit Holder, payment of the applicable fee, and approval of the application by the Building Inspector.

(j) Revocation or suspension of Building Permits. If the Building Inspector/Code Enforcement Officer determines that a Building Permit was issued in error because of incorrect, inaccurate or incomplete information, or that the work for which a Building Permit was issued violates the Uniform Code or the Energy Code, the Building Inspector/Code Enforcement Officer shall revoke the Building Permit or suspend the

Building Permit until such time as the Permit Holder demonstrates that (1) all work then completed is in compliance with all applicable provisions of the Uniform Code and the Energy Code and (2) all work then proposed to be performed shall be in compliance with all applicable provisions of the Uniform Code and the Energy Code.

(k) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 Fees of this local law must be paid at the time of submission of an application for a Building Permit, for an amended Building Permit, or for renewal of a Building Permit.

SECTION 5. CONSTRUCTION INSPECTIONS.

(a) Work to remain accessible and exposed. Work shall remain accessible and exposed until inspected and accepted by the Building Inspector/Code Enforcement Officer or by an Inspector authorized by the Building Inspector/Code Enforcement Officer. The Permit Holder shall notify the Building Inspector/Code Enforcement Officer when any element of work described in subdivision (b) of this section is ready for inspection.

(b) Elements of work to be inspected. The following elements of the construction process shall be inspected made, where applicable:

- (1) work site prior to the issuance of a Building Permit;
- (2) footing and foundation;
- (3) preparation for concrete slab;
- (4) framing;
- (5) building systems, including underground and rough-in;
- (6) fire resistant construction;
- (7) fire resistant penetrations;
- (8) solid fuel burning heating appliances, chimneys, flues or gas vents;
- (9) Energy Code compliance; and

(10) a final inspection after all work authorized by the Building Permit has been completed.

(c) Inspection results. After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the Permit Holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of

the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 Fees of this local law must be paid prior to or at the time of each inspection performed pursuant to this section.

SECTION 6. STOP WORK ORDERS.

(a) Authority to issue. The Building Inspector/Code Enforcement Officer is authorized to issue Stop Work Orders pursuant to this section. The Building Inspector/Code Enforcement Officer shall issue a Stop Work Order to halt:

(1) any work that is determined by the Building Inspector/Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(2) any work that is being conducted in a dangerous or unsafe manner in the opinion of the Building Inspector/Code Enforcement Officer, without regard to whether such work is or is not work for which a Building Permit is required, and without regard to whether a Building Permit has or has not been issued for such work, or

(3) any work for which a Building Permit is required which is being performed without the required Building Permit, or under a Building Permit that has become invalid, has expired, or has been suspended or revoked.

(b) Content of Stop Work Orders. Stop Work Orders shall (1) be in writing, (2) be dated and signed by the Building Inspector/Code Enforcement Officer, (3) state the reason or reasons for issuance, and (4) if applicable, state the conditions which must be satisfied before work will be permitted to resume.

(c) Service of Stop Work Orders. The Building Inspector/Code Enforcement Officer shall cause the Stop Work Order, or a copy thereof, to be served on the owner of the affected property (and, if the owner is not the Permit Holder, on the Permit Holder) personally or by [registered mail / certified mail]. The Building Inspector/Code Enforcement Officer shall be permitted, but not required, to cause the Stop Work Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work affected by the Stop Work Order, personally or by registered mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Stop Work Order.

(d) Effect of Stop Work Order. Upon the issuance of a Stop Work Order, the owner of the affected property, the Permit Holder and any other Person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the Stop Work Order.

(e) Remedy not exclusive. The issuance of a Stop Work Order shall not be the exclusive remedy available to address any event described in subdivision (a) of this section, and the authority to issue a Stop Work Order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under section 15 Violations of this local law or under any other applicable local law or State law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a Stop Work Order.

SECTION 7. CERTIFICATES OF OCCUPANCY / CERTIFICATES OF COMPLIANCE

(a) Certificates of Occupancy / Certificates of Compliance required. A Certificate of Occupancy / Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a [Certificate of Occupancy / Certificate of Compliance].

(b) Issuance of Certificates of Occupancy / Certificates of Compliance. The Building Inspector shall issue a Certificate of Occupancy / Certificate of Compliance if the work which was the subject of the Building Permit was completed in accordance with all applicable provisions of the Uniform Code and Energy Code and, if applicable, that the structure, building or portion thereof that was converted from one use or occupancy classification or subclassification to another complies with all applicable provisions of the Uniform Code and Energy Code. The Building Inspector or a Code Enforcement Officer authorized by the Building Inspector shall inspect the building, structure or work prior to the issuance of a Certificate of Occupancy / Certificate of Compliance. In addition, where applicable, the following documents, prepared in accordance with the provisions of the Uniform Code by such person or persons as may be designated by or otherwise acceptable to the Building Inspector/Code Enforcement Officer, at the expense of the applicant for the Certificate of Occupancy / Certificate of Compliance, shall be provided to the Building Inspector/Code Enforcement Officer prior to the issuance of the Certificate of Occupancy / Certificate of Compliance:

(1) a written statement of structural observations and/or a final report of special inspections, and

(2) flood hazard certifications.

(c) Contents of Certificates of Occupancy / Certificates of Compliance. A Certificate of Occupancy / Certificate of Compliance shall contain the following information:

(1) the Building Permit number, if any;

(2) the date of issuance of the Building Permit, if any;

- (3) the name, address and tax map number of the property;
- (4) if the Certificate of Occupancy / Certificate of Compliance is not applicable to an entire structure, a description of that portion of the structure for which the Certificate of Occupancy / Certificate of Compliance is issued;
- (5) the use and occupancy classification of the structure;
- (6) the type of construction of the structure;
- (7) the assembly occupant load of the structure, if any;
- (8) if an automatic sprinkler system is provided, a notation as to whether the sprinkler system is required;
- (9) any special conditions imposed in connection with the issuance of the Building Permit; and
- (10) the signature of the Building Inspector issuing the Certificate of Occupancy / Certificate of Compliance and the date of issuance.

(d) Temporary Certificate. The Building Inspector shall be permitted to issue a Temporary Certificate allowing the temporary occupancy of a building or structure, or a portion thereof, prior to completion of the work which is the subject of a Building Permit. However, in no event shall the Building Inspector issue a Temporary Certificate unless the Building Inspector determines (1) that the building or structure, or the portion thereof covered by the Temporary Certificate, may be occupied safely, (2) that any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and (3) that all required means of egress from the building or structure have been provided. The Building Inspector may include in a Temporary Certificate such terms and conditions as he or she deems necessary or appropriate to ensure safety or to further the purposes and intent of the Uniform Code. A Temporary Certificate shall be effective for a period of time, not to exceed [6] months, which shall be determined by the Building Inspector and specified in the Temporary Certificate. During the specified period of effectiveness of the Temporary Certificate, the Permit Holder shall undertake to bring the building or structure into full compliance with all applicable provisions of the Uniform Code and the Energy Code.

(e) Revocation or suspension of certificates. If the Building Inspector/Code Enforcement Officer determines that a Certificate of Occupancy / Certificate of Compliance or a Temporary Certificate was issued in error because of incorrect, inaccurate or incomplete information, and if the relevant deficiencies are not corrected to the satisfaction of the Building Inspector/Code Enforcement Officer within such period of time as shall be specified by the Building Inspector/Code Enforcement Officer, the Building Inspector/Code Enforcement Officer shall revoke or suspend such certificate.

(f) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 Fees of this local law must be paid at the time of submission of an application for a Certificate of Occupancy / Certificate of Compliance or for Temporary Certificate.

SECTION 8. NOTIFICATION REGARDING FIRE OR EXPLOSION.

The chief of any fire department providing fire fighting services for a property within this Town shall promptly notify the Building Inspector/Code Enforcement Officer of any fire or explosion involving any structural damage, fuel burning appliance, chimney or gas vent.

SECTION 9. UNSAFE BUILDING AND STRUCTURES

Unsafe structures and equipment in this Town shall be identified and addressed in accordance with the procedures established by Local Law, as now in effect or as hereafter amended from time to time.

SECTION 10. OPERATING PERMITS.

(a) Operation Permits required. Operating Permits shall be required for conducting the activities or using the categories of buildings listed below:

(1) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in Tables 2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4) in the publication entitled "Fire Code of New York State" and incorporated by reference in 19 NYCRR section 1225.1;

(2) hazardous processes and activities, including but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;

(3) use of pyrotechnic devices in assembly occupancies;

(4) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and

(5) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by resolution adopted by the Town Board of this Town.

Any person who proposes to undertake any activity or to operate any type of building listed in this subdivision (a) shall be required to obtain an Operating Permit prior to commencing such activity or operation.

(b) Applications for Operating Permits. An application for an Operating Permit shall be in writing on a form provided by or otherwise acceptable to the Building Inspector/Code Enforcement Officer. Such application shall include such information as

the Building Inspector/Code Enforcement Officer deems sufficient to permit a determination by the Building Inspector/Code Enforcement Officer that quantities, materials, and activities conform to the requirements of the Uniform Code. If the Building Inspector/Code Enforcement Officer determines that tests or reports are necessary to verify conformance, such tests or reports shall be performed or provided by such person or persons as may be designated by or otherwise acceptable to the Building Inspector/Code Enforcement Officer, at the expense of the applicant.

(c) Inspections. The Building Inspector/Code Enforcement Officer shall inspect the subject premises prior to the issuance of an Operating Permit.

(d) Multiple Activities. In any circumstance in which more than one activity listed in subdivision (a) of this section is to be conducted at a location, the Building Inspector/Code Enforcement Officer may require a separate Operating Permit for each such activity, or the Building Inspector/Code Enforcement Officer may, in his or her discretion, issue a single Operating Permit to apply to all such activities.

(e) Duration of Operating Permits. Operating Permits shall remain in effect until reissued, renewed, revoked, or suspended.

(f) Revocation or suspension of Operating Permits. If the Building Inspector/Code Enforcement Officer determines that any activity or building for which an Operating Permit was issued does not comply with any applicable provision of the Uniform Code, such Operating Permit shall be revoked or suspended.

(g) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 Fees of this local law must be paid at the time submission of an application for an Operating Permit, for an amended Operating Permit, or for reissue or renewal of an Operating Permit.

SECTION 11. FIRE SAFETY AND PROPERTY MAINTENANCE INSPECTIONS

(a) Inspections required. Fire safety and property maintenance inspections of buildings and structures shall be performed by the Building Inspector/Code Enforcement Officer at the following intervals:

(1) Fire safety and property maintenance inspections of buildings or structures which contain an area of public assembly shall be performed at least once every twelve (12) months.

(2) Fire safety and property maintenance inspections of buildings or structures being occupied as dormitories shall be performed at least once every twelve (12) months.

(3) Fire safety and property maintenance inspections of all multiple dwellings not included in paragraphs (1) or (2) of this subdivision, and all non-residential buildings, structures, uses and occupancies not included in paragraphs (1) or (2) of this

subdivision, shall be performed at least once every [specify interval consistent with local conditions, not to exceed thirty-six (36) months].

(b) Inspections permitted. In addition to the inspections required by subdivision (a) of this section, a fire safety and property maintenance inspection of any building, structure, use, or occupancy, or of any dwelling unit, may also be performed by the Building Inspector/Code Enforcement Officer at any time upon:

(1) the request of the owner of the property to be inspected or an authorized agent of such owner;

(2) receipt by the Building Inspector/Code Enforcement Officer of a written statement alleging that conditions or activities failing to comply with the Uniform Code or Energy Code exist; or

(3) receipt by the Building Inspector/Code Enforcement Officer of any other information, reasonably believed by the Building Inspector/Code Enforcement Officer to be reliable, giving rise to reasonable cause to believe that conditions or activities failing to comply with the Uniform Code or Energy Code exist;

provided, however, that nothing in this subdivision shall be construed as permitting an inspection under any circumstances under which a court order or warrant permitting such inspection is required, unless such court order or warrant shall have been obtained.

(c) OFPC Inspections. Nothing in this section or in any other provision of this local law shall supersede, limit or impair the powers, duties and responsibilities of the New York State Office of Fire Prevention and Control ("OFPC") and the New York State Fire Administrator under Executive Law section 156-e and Education Law section 807-b. Notwithstanding any other provision of this section to the contrary:

(1) the Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure which contains an area of public assembly if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;

(2) the Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a building or structure occupied as a dormitory if OFPC performs fire safety and property maintenance inspections of such building or structure at least once every twelve (12) months;

(3) the Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a multiple dwelling not included in paragraphs (1) or (2) of subdivision (a) of this section if OFPC performs fire safety and property maintenance inspections of such multiple dwelling at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section; and

(4) the Building Inspector/Code Enforcement Officer shall not perform fire safety and property maintenance inspections of a non-residential building, structure, use or occupancy not included in paragraphs (1) or (2) of subdivision (a) of this section if

OFPC performs fire safety and property maintenance inspections of such non-residential building, structure, use or occupancy at intervals not exceeding the interval specified in paragraph (3) of subdivision (a) of this section.]

(d) Fee. The fee specified in or determined in accordance with the provisions set forth in section 16 (Fees) of this local law must be paid prior to or at the time each inspection performed pursuant to this section. This subdivision shall not apply to inspections performed by OFPC.

SECTION 12. COMPLAINTS

The Code Enforcement Officer shall review and investigate complaints which allege or assert the existence of conditions or activities that fail to comply with the Uniform Code, the Energy Code, this local law, or any other local law, ordinance or regulation adopted for administration and enforcement of the Uniform Code or the Energy Code. The process for responding to a complaint shall include such of the following steps as the Code Enforcement Officer may deem to be appropriate:

(a) performing an inspection of the conditions and/or activities alleged to be in violation, and documenting the results of such inspection;

(b) if a violation is found to exist, providing the owner of the affected property and any other Person who may be responsible for the violation with notice of the violation and opportunity to abate, correct or cure the violation, or otherwise proceeding in the manner described in section 15 (Violations) of this local law;

(c) if appropriate, issuing a Stop Work Order;

(d) if a violation which was found to exist is abated or corrected, performing an inspection to ensure that the violation has been abated or corrected, preparing a final written report reflecting such abatement or correction, and filing such report with the complaint.

SECTION 13. RECORD KEEPING.

(a) The Building Inspector shall keep permanent official records of all transactions and activities conducted by all Code Enforcement Personnel, including records of:

(1) all applications received, reviewed and approved or denied;

(2) all plans, specifications and construction documents approved;

(3) all Building Permits, Certificates of Occupancy / Certificates of Compliance, Temporary Certificates, Stop Work Orders, and Operating Permits issued;

(4) all inspections and tests performed;

(5) all statements and reports issued;

(6) all complaints received;

(7) all investigations conducted;

(8) all other features and activities specified in or contemplated by sections 4 through 12, inclusive, of this local law, including; and

(9) all fees charged and collected.

(b) All such records shall be public records open for public inspection during normal business hours. All plans and records pertaining to buildings or structures, or appurtenances thereto, shall be retained for at least the minimum time period so required by State law and regulation.

SECTION 14. PROGRAM REVIEW AND REPORTING

(a) The Building Inspector shall annually submit to the Town Board a written report and summary of all business conducted by the Code Enforcement Officer and the Inspectors, including a report and summary of all transactions and activities described in section 13 Record Keeping of this local law and a report and summary of all appeals or litigation pending or concluded.

(b) The Building Inspector shall annually submit to the Secretary of State, on behalf of the Town, on a form prescribed by the Secretary of State, a report of the activities of the Town relative to administration and enforcement of the Uniform Code.

(c) The Building Inspector shall, upon request of the New York State Department of State, provide to the New York State Department of State, from the records and related materials the Town is required to maintain, excerpts, summaries, tabulations, statistics and other information and accounts of the activities of the Town in connection with administration and enforcement of the Uniform Code.

SECTION 15: VIOLATIONS

(a) Compliance Orders. The Code Enforcement Officer is authorized to order in writing the remedying of any condition or activity found to exist in, on or about any building, structure, or premises in violation of the Uniform Code, the Energy Code, or this local law. Upon finding that any such condition or activity exists, the Code Enforcement Officer shall issue a Compliance Order. The Compliance Order shall (1) be in writing; (2) be dated and signed by the Code Enforcement Officer; (3) specify the condition or activity that violates the Uniform Code, the Energy Code, or this local law; (4) specify the provision or provisions of the Uniform Code, the Energy Code, or this local law which is/are violated by the specified condition or activity; (5) specify the period of time which the Code Enforcement Officer deems to be reasonably necessary for achieving compliance; (6) direct that compliance be achieved within the specified period of time; and (7) state that an action or proceeding to compel compliance may be instituted if compliance is not achieved within the specified period of time. The Code Enforcement

Officer shall cause the Compliance Order, or a copy thereof, to be served on the owner of the affected property personally or by registered mail. The Code Enforcement Officer shall be permitted, but not required, to cause the Compliance Order, or a copy thereof, to be served on any builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other Person taking part or assisting in work being performed at the affected property personally or by registered mail; provided, however, that failure to serve any Person mentioned in this sentence shall not affect the efficacy of the Compliance Order.

(b) Appearance Tickets. The Code Enforcement Officer and each Inspector are authorized to issue appearance tickets for any violation of the Uniform Code.

(c) Civil Penalties. In addition to those penalties proscribed by State law, any Person who violates any provision of the Uniform Code, the Energy Code or this local law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law, shall be liable to a civil penalty of not more than \$200 for each day or part thereof during which such violation continues. The civil penalties provided by this subdivision shall be recoverable in an action instituted in the name of the Town.

Additionally, in the event of violations of Section 106 of the New York State Property Maintenance Law relating to refuse, junk cars, etc., the Town is hereby authorized to remove such refuse, junk cars, etc. in the same manner set forth in the Town of Durham's Local Law, referred to hereinabove at Section 9 Unsafe Buildings and Structures.

(d) Injunctive Relief. An action or proceeding may be instituted in the name of the Town, in a court of competent jurisdiction, to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of the Uniform Code, the Energy Code, this local law, or any term or condition of any Building Permit, Certificate of Occupancy / Certificate of Compliance, Temporary Certificate, Stop Work Order, Operating Permit, Compliance Order, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this local law. In particular, but not by way of limitation, where the construction or use of a building or structure is in violation of any provision of the Uniform Code, the Energy Code, this local law, or any Stop Work Order, Compliance Order or other order obtained under the Uniform Code, the Energy Code or this local law, an action or proceeding may be commenced in the name of this Town, in the Supreme Court or in any other court having the requisite jurisdiction, to obtain an order directing the removal of the building or structure or an abatement of the condition in violation of such provisions. No action or proceeding described in this subdivision shall be commenced without the appropriate authorization from the Town Board.

(e) Remedies Not Exclusive. No remedy or penalty specified in this section shall be the exclusive remedy or remedy available to address any violation described in this section, and each remedy or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies or penalties specified in this section, in section 6 Stop Work Orders of this local law, in any other section of this local law, or in any other applicable law. Any remedy or penalty specified in this section may

be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy or penalty specified in this section, in section 6 Stop Work Orders of this local law, in any other section of this local law, or in any other applicable law. In particular, but not by way of limitation, each remedy and penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the penalties specified in subdivision (2) of section 382 of the Executive Law, and any remedy or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any penalty specified in subdivision (2) of section 382 of the Executive Law.

SECTION 16: FEES

A fee schedule shall be established by resolution of the Town Board. Such fee schedule may thereafter be amended from time to time by like resolution. The fees set forth in, or determined in accordance with, such fee schedule or amended fee schedule shall be charged and collected for the submission of applications, the issuance of Building Permits, amended Building Permits, renewed Building Permits, Certificates of occupancy / Certificates of Compliance, Temporary Certificates, Operating Permits, fire safety and property maintenance inspections, and other actions of the Building Inspector/Code Enforcement Officer described in or contemplated by this local law.

SECTION 17. INTERMUNICIPAL AGREEMENTS

The Town Board may, by resolution, authorize the Town to enter into an agreement, in the name of the Town, with other governments to carry out the terms of this local law, provided that such agreement does not violate any provision of the Uniform Code, the Energy Code, Part 1203 of Title 19 of the NYCRR, or any other applicable law.

SECTION 18. PARTIAL INVALIDITY

If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

SECTION 19. REPEALER

The Town of Durham Local Law #4 of 2007, entitled "Providing for the Administration and Enforcement of the NYS Uniform Fire Prevention and Building Code" is hereby repealed.

SECTION 20. EFFECTIVE DATE

This local law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

Motions seconded by Mrs. Sutton, all were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Mrs. Sutton motioned that the adoption of Local Law #3 of 2009 Providing for the Administration and Enforcement of the New York State Uniform Fire Prevention and Building Code is an action not covered by SEQR. As the law is a Repealer and reinstatement of a current law and will not affect the environment, seconded by Ms. Wood. All were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

The site plan reviews for Stiefel Laboratories and Creative Customs tabled until July 21, 2009, as neither application were represented.

The board reviewed variance application VP2009-03 from John Johann. The property is deeded to Harriet Gilmour located at 3003 Route 20, Cornwallville, NY 12418. S/B/L 48.02-1-27. They are asking for a distance variance from the center of the road. Proposed garage would be 44 feet from the edge of the highway. Building Inspector Cunningham did a site review and noted if approved the proposed garage would be in line with the other buildings along that stretch of County Route 20.

Ms. Wood motioned to approve VP2009-03 for 48.02-1-27 3003 County Route 20, permitting construction of a garage at 44 feet from the center of County Route 20, maintaining the same set back as other structures along that stretch of road. This motion is exempt from SEQR review. Motion seconded by Mr. Carr. All were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

The board reviewed the survey and drawing for Chierchio subdivision application SUB09-02, to subdivide parcel 20.00-1-8 consisting of 4.5 acres into two lots, lot 1 2.06 acres and lot 2 2.22 acres. The survey now includes the notes for 50' right of way and driveway maintenance agreement. The public hearing scheduled for August 4, 2009 at 7:30 p.m.

The board review Site Plan application SPR09-06 Oak Hill Groom & Board, Inc. They have converted the building at 21.02-3-6 from a coffee shop to a pet grooming and boarding establishment. They previously inquired about signage permits and building permits of which neither was required in this conversion. However, under current Site Plan Review Law any commercial establishment changing its use must file a Site Plan Review Application with the town. A public hearing scheduled for August 4, 2009 at 7:30 p.m.

Having reviewed the Mass Gathering Permit MGP2009-02 for Grey Fox Bluegrass Festival July 15-19, 2009 **Ms. Wood motioned to approve MGP2009-02, seconded by Mr. Cunningham. All were in favor motion carried.** (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Mrs. Sutton motioned to approve the purchase of a sign for Brandow Park to state what the park rules and hours are. Seconded by Mr. Cunningham, all were in favor motion carried. (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Having reviewed the Mass Gathering Permit MGP2009-03 for Andy McGann Music Festival July 18, 2009 **Ms. Wood motioned to approve MGP2009-03 contingent upon receipt of the letter from the Durham Volunteer Ambulance Squad acknowledging notification of the event. Seconded by Mr. Carr, all were in favor motion carried.** (Hulbert-yea, Sutton-yea, Cunningham-yea, Carr-yea, Wood-yea)

Ms. Wood motion to adjourn at 8:23 p.m. seconded by Mrs. Sutton.

Minutes approved:

Chris Kohrs, Town Clerk