

22 JUNE 2011

**TOWN BOARD SPECIAL MEETING  
TOWN HALL, MAHOPAC, N.Y.**

A Special Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Kenneth Schmitt on the 22<sup>nd</sup> day of June 2011 at 7:20 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Ravallo, Councilman Lombardi, Councilwoman McDonough and Supervisor Schmitt.

The Pledge of Allegiance to the Flag was observed prior to the start of official business and a moment of silence was observed to honor those serving in the United States Armed Forces.

**PUBLIC HEARING HELD - THE ESTABLISHMENT OF RATES FOR RESIDENTIAL  
GARBAGE AND REFUSE PICKUP FOR YEAR 2011**

Supervisor Schmitt asked the Town Clerk to read the following Notice of Public Hearing as published in the Town's official newspaper:

**LEGAL NOTICE**  
**PUBLIC HEARING**  
**REGARDING THE**  
**ESTABLISHMENT**  
**OF RATES FOR**  
**RESIDENTIAL**  
**GARBAGE AND REFUSE**  
**PICKUP FOR YEAR 2011**  
**NOTICE IS HEREBY**  
**GIVEN,** that the Town Board  
of the Town of Carmel,  
hereby schedules a Public  
Hearing at the Town Hall, 60  
McAlpin Avenue, Mahopac,  
NY 10541 on Wednesday,  
June 22, 2011 at 7:00 PM  
or as soon thereafter that  
evening as possible for the  
purpose of establishing  
maximum rates pursuant to  
Town Code Section 95-31 et  
seq., for the year 2011 with  
respect to residential garbage  
and refuse collections by  
licensees authorized under  
Chapter 95 of the Town Code  
to engage in the collection  
and disposal of refuse and  
garbage in the Town of  
Carmel.  
At said Public Hearing, all  
interested persons shall be  
heard on the subject thereof.  
By Order of the Town  
Board of the Town of  
Carmel  
Ann Garris Town Clerk

With no one objecting to the public notice as read, Supervisor Schmitt opened the Public Hearing for public comment at 7:22 p.m. Seventeen (17) people were in attendance.

Supervisor Schmitt called upon Gregory Folchetti to explain the purpose of the Public Hearing.

Mr. Folchetti explained that the Public Hearing is being held in accordance with the amended Chapter 95 of the Town Code. The Town Board will set the maximum monthly rates on an annual basis for the collection of residential garbage and refuse, a maximum of 96 gallons for once a week pickup and 192 gallons for twice a week pickup. The Public Hearing is being held to collect information regarding the reasonable rates that the Town should impose for those pickups.

Mr. Folchetti further explained that there are a variety of relevant factors to consider when setting the rates which include the carters' fuel costs, overhead costs, labor costs, and tipping fees for the disposal of refuse; a reasonable return for the carters as well as the protection of residents from excessive charges.

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Mr. Folchetti stated that the Town Board will collect information from the residents and the carters present at the Public Hearing. They may elect to keep the Public Hearing open for a written submission period for up to forty-five days, at their discretion. The Town Board can then consider all of the comments and information that is in the record. At that time they may make a determination as to what they believe the appropriate rates would be under the statute and then establish the rates by resolution at the time they deem appropriate.

Supervisor Schmitt confirmed that the Town Board is setting the maximum monthly rates for once a week and twice a week pickups for the year 2011 only. He then asked Mr. Folchetti what becomes of license renewal applications submitted to the Town during the proposed forty-five day period and the rates have not been established.

Mr. Folchetti stated that the 2010 rates would be in effect. If the applications are timely under the statute in terms of the lead time for submission, then they are not deemed to be in default or having lapsed, and that will dictate whether or not they are new applications or renewals at the time that they are issued. The applicants who have pending applications before the new rates are set are subject to the rates that exist.

Supervisor Schmitt confirmed that if an application comes before the Town Board next month and the new rate has not been established, it is subject to the current rate.

Mr. Folchetti stated that it would be should the Town Board decide to act on the application. The applications are subject to a process to adhere to and not automatically considered by the Town Board at their next meeting.

Councilman Ravallo commented that in all practicality, it will not happen.

Supervisor Schmitt pointed out that a forty-five day period to allow for written submissions would result in the rates being set sometime in August and there will be applications being submitted for renewal during that timeframe.

Mr. Folchetti stated that forty-five days was a suggested period of time. He stated that the Town Board is free to close the Public Hearing tonight, although he would not recommend it because all of the information may not be available. The Town Board may also consider making the written submission period shorter.

Councilman Lombardi said that there is no reason to wait forty-five days to act on this.

Supervisor Schmitt agreed.

Mr. Folchetti stated that forty-five days was only included as an outside window.

Phyllis Honig stated that she was speaking on behalf of the Zoning Compliance Committee and read the following prepared statement:

“When we met here at the last public meeting regarding the Chapter 95 Garbage Ordinance, Supervisor Schmitt suggested forming another committee to research the pricing for single and twice weekly garbage pickup. The residents rejected that idea “No more committees,” they said.”

Supervisor Schmitt clarified that the establishment of a committee was the suggestion of Greg Folchetti, Legal Counsel.

Ms. Honig continued:

“The meeting was adjourned without a decision being made. And tonight here we are again facing the same problem: how much to cap prices monthly for single and twice weekly garbage pickups. Last Monday the Zoning Compliance Committee, chaired by Councilwoman Susan McDonough, held our regular

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monthly meeting. One of the issues we discussed was the failure of the Board to reach a price for garbage pickups. We all agreed this discussion has dragged on far too long. It's been more than two years since former councilman Anthony DiCarlo, then chairman of the Zoning Compliance Committee, first introduced the idea of a Carmel Garbage District. Residents are frustrated that it hasn't been signed into law, and I'm sure the Board is tired of it too."

Councilman Lombardi clarified that the law has been signed. It states that the rates must be established yearly. Therefore, Public Hearings to obtain input from the community with regard to establishing the rates will be held yearly.

Ms. Honig continued:

"To that end, that's why our committee decided to do our own review and present it to the Board and residents at this meeting. We're looking for closure -but it should be a fair one -to residents as well as to the private carters. We do not consider ourselves presumptuous to do this review since the suggestion for a Garbage District originally came out of our committee. Only one of our members dissented; he felt the \$25 monthly fee for two pickups a week should stand.

We would like to reiterate to the 3 members of the Board who voted down the original plan to form a Garbage District before the fact finding had been completed, that it was a failure on their part to do so; it did not represent the best interests of the community they serve. In hindsight, a Garbage District vs. private carters would have been the best way to go. Carmel is composed of three districts, and had we chosen to go ahead with the Garbage District, it was decided that we would have three carters -one for each district. The \$25 monthly rate would have been for all services -2 garbage pickups a week, one recycle, and two bulk pickups a year plus Christmas trees. This would have been a fair price for three carters with a whole district to themselves. But we're in a different situation now that we've adopted Chapter 95. We have eight collectors, and one of those has three additional companies working under their license. We're now dealing with 13 companies, not three. And so we recommend that we chose a pricing cap that will be fair to the residents, as well as to the private carters.

And with that in mind, the Zoning Compliance Committee suggests the following prices for garbage pickups: We left in place the price cap of \$25 monthly for the once a week pickup. And the size of this, a 96 gallon can (or cans) is already written into the ordinance. 96 gallons is a lot of garbage and we felt that most people would choose the once weekly pickup. We priced the twice a week cap at \$30 a month, and, if it's not already written in the Ordinance, suggest it be 180 gallons of garbage. A senior citizen discount of 10 percent is included in the ordinance, and can be applied to the cap. Included in each plan is one recycle weekly, two bulk pickups a year (3 cubic yards ea.), and one pickup of Christmas trees.

How we reached these figures: We averaged the total of prices charged by all the carters serving our community on a once weekly and twice weekly basis, took into consideration the rise in fuel costs since we initially considered a garbage district, and then set the caps at prices slightly lower than the averages. These prices, though not what we initially wanted, still provide lower costs to the residents than before, and with added services they did not have.

In checking the cost of private carters, we found a variety of prices. So whatever happens with the capping fees, we urge people to call the eight carters and educate themselves on the choices they have. The carters can charge you less, but they will not be able to charge you more than what the capped fees are. The list of carters can be found on the Carmel Town Government website.

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The Zoning Compliance Committee suggests to the Board, and to the residents of Carmel, that these prices are fair to both the consumers and the private carters, and recommend that you seriously consider adopting them as part of the revised Chapter 95 Ordinance.”

Supervisor Schmitt asked Councilwoman McDonough as the Chairperson of the Zoning Compliance Committee, if she agreed with the recommendations.

Councilwoman McDonough replied, yes.

Gerry Padian, Esq., Tashjian & Padian Attorneys At Law, representing Sani-Pro Disposal Services Corp. stated that he did not know which three carters' information was averaged by Ms. Honig and what data points were used. However, they also provided information to the Town Board. A detailed analysis was performed which included all costs attributable for picking up garbage in the Town of Carmel.

Mr. Padian stated that carters vary. Sani-Pro is a larger carting company with a fulltime maintenance crew. They pay a prevailing wage, are a union shop, and have a strict safety program. They utilize newer trucks and newer equipment. They pride themselves in the service they provide. For that, he stated, they cannot properly pick up at \$25.00 per week.

Mr. Padian further stated that Sani-Pro can pick up garbage in the Town of Southeast for \$20.00 per week because there they provide service to the entire town. It is a much smaller town and up to one third of the residences are condominiums. Through their municipal contract, Sani-Pro is dealing with one customer, not thousands. Because of the economy of scale, it does average out to \$20.00. However, the same logic does not apply in Carmel. One customer may be located one half mile from the next. A specialty truck may be required because of the Town's winding roads.

Mr. Padian presented an advertisement for \$25.00 monthly garbage collection in a local newspaper and stated that the Town Board does not need to set a maximum rate to get the lowest prices. What is needed in the Town of Carmel is free enterprise. He questioned where rate regulations will stop.

Mr. Padian suggested where there is competition and rate regulations are imposed, competition becomes stifled. Companies that operate in an efficient manner, who put focus on service and safety who cannot afford to pick up at such low rates will leave the market place and the town will be left with fewer carters. Service suffers first, then price and ultimately the citizens. He commented that low rates will be maintained through competition and that other than New York City, Carmel will be the only municipality to set rates.

Supervisor Schmitt pointed out that there are other municipalities in New York State that set the rates.

Mr. Padian asked which ones and whether or not they have flow control. He stated that because the Town of Yorktown has flow control, they can charge \$18.00 per month for pickup. Since the Town of Carmel does not have a dump or a transfer station, when those costs are factored in, it would be impossible to pick up in a legal fashion for \$25.00 per month. Mr. Padian concluded that the monthly fee for residential once-a-week pickup should be \$35.00 and \$40.00 for twice-a-week pickup. He added that Sani-Pro does not require a set contract for residential customers.

Tom Honohan commented that establishing a maximum rate will only yield a short term benefit to residents. He stated that the small carting companies' costs will probably exceed \$25.00 per month given that dumping costs are \$17.00 to \$21.00 per household for a normal month, more during months with major holidays. In addition, the insurance costs for this industry are extremely high.

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Mr. Honohan concluded by stating that the Town of Carmel government has no business in establishing pricing for a private company and that the free market should be allowed to determine the price limits for garbage collection.

Councilman Ravallo inquired why Mr. Honohan did not identify himself as a member of the Town of Carmel Board of Ethics.

Mr. Honohan apologized for not stating that fact. He said that he was speaking as a resident of the Town of Carmel.

Councilman Ravallo expressed issue with Mr. Honohan not identifying himself as a member of the Board of Ethics.

Judy Ravnitzky asked for the name of the town that sets their garbage collection rates.

Supervisor Schmitt stated that it was the Town of Wallkill in Orange County. He said that it was not mentioned in the information he had with regard to the matter, whether or not they had flow control.

Michael Barile inquired who the members of the Zoning Compliance Committee were that came up with the rates presented.

Councilwoman McDonough stated that they were the people who attend the monthly meetings.

Mr. Barile asked how many people have attended the monthly meetings.

Councilwoman McDonough stated that she would have to refer back to her notes from the meetings.

Mr. Barile clarified that he is not a member of the Zoning Compliance Committee. He stated that the Town Board should listen to the comments made by the attorney representing Sani-Pro. He pointed to a stenographer present at the meeting and noted the potential for the Town Board's decision to be challenged at the expense of the taxpayers. Mr. Barile concluded that the Town Board should once again commence the fact finding process commenced over a year ago to determine the cost of town-wide garbage collection.

Jerry Ravnitzky suggested that the Town Board review the financial statements of the carter companies. He commented that larger carting companies should be more efficient and therefore their rates should be lower. He questioned why a small company can advertise at \$25.00 for twice weekly and \$17.00 for once weekly, monthly pickup and other companies could not. Mr. Ravnitzky agreed that the Town Board should reconsider town-wide garbage collection.

Mr. Ravnitzky went on to state that competition could be maintained on the basis of services provided and carter companies setting their prices lower than the established rates. He commented that if the residents of the Town of Southeast can have rates in the \$22.00 to \$23.00 range per month for twice weekly pickup, so should the Town of Carmel.

Don Schiff inquired if there was a limit to the amount of garbage that could be put out for collection at one time.

Councilwoman McDonough indicated that in the Town's legislation with regard to garbage collection, there is a 96 gallon maximum for once weekly pickup, and a 192 gallon maximum for twice weekly pickup.

Mr. Schiff inquired how that figure came about.

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Councilwoman McDonough replied that it was agreed upon at a Town Board meeting on June 1<sup>st</sup>.

Councilman Ravallo added that 96 gallons is a large garbage can.

Mr. Schiff stated that he would be willing to pay more if the garbage companies would accept more garbage. Citing his satisfaction with his current company, he stated that he pays \$35.00 per month because they offer two bulk pickups a month.

Bill McCormack stated that he is a member of the Zoning Compliance Committee and that he supported their initial recommendation calling for town-wide garbage collection. Since the Town Board has chosen not to pursue this option, he stated that the rate of \$25.00 per month for twice weekly pickup was good and that \$25.00 per month for once weekly pickup was satisfactory. Mr. McCormack expressed his frustration with the length of time it is taking to set the rates.

Anita Oliver confirmed that the rates are being established for the year 2011. She went on to inquire about the forty-five day comment period and inquire about when the rates will be set.

Councilman Lombardi reiterated that the Public Hearing may be left open for a maximum of forty five days for written comment and that the Town Board may choose to close it at any time, at their discretion. He stated that the rates are being set for applicants whose licenses are coming due, and will commence from the date the rates are established to the following year.

Supervisor Schmitt stated that the rates will not be established tonight because the Public Hearing will remain open for written submissions.

Ms. Oliver commented that the rates should be set at \$25.00 per month for twice weekly pickup with bulk pickup included. She added that she would prefer town-wide garbage collection in the future.

Ms. Honig asked if a carter's rates will remain in effect for the length of their license period.

Supervisor Schmitt replied, yes.

Ms. Honig stated that when she contacted all of the carters, the highest rate was just over \$30.00 per month for two pickups per week and the remaining rates were lower. She noted that one company's rates were just over \$17.00 per month.

Councilman Ravallo indicated that his own bill for garbage collection is almost \$40.00 per month for twice weekly pickup.

Supervisor Schmitt stated that he is paying \$36.00 per month plus tax.

Mr. Ravnitzky stated that the lower rates of certain companies were initiated because the Zoning Compliance Committee was looking into this matter, not as a result of competition.

Councilman Ravallo noted that for many years the rates for garage collection were stable. However, the rates were driven down by the addition of smaller carting companies into the Town and that competition is dictating the market place right now.

John Lupinacci expressed his concern that if hypothetically, a carter is granted a license in September at the 2011 rates and a second carter applies for a license the following February when the 2012 rates have been established at a higher amount, the second carter is at a competitive disadvantage.

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Mr. Lupinacci recommended that the rates be set for the calendar year because commerce may be impeded by putting a company at a competitive disadvantage.

Mr. Barile recommended that since there is so much confusion with regard to the rates, the licenses should be granted for the calendar year. Every carter's license should expire at the same time, prorating the licenses as necessary.

Mr. Padian stated that all of his client's financial information is readily available and suggested that the Town Board request the financial information from all licensed carters. He stated that they would like the opportunity to meet with the Town Board to demonstrate what their costs are.

Councilman Ravallo explained that the Town has in the past, audited the financial records of the carter companies.

Jonathon Schneider acknowledged Sani-Pro for agreeing to share their financial information. He stated that in addition to reviewing the financial information of the carters, the Town Board should review the Town of Southeast's financial information and appraise their profit margin. He recommended that the Town's legislation with regard to garbage be evaluated and the application process streamlined. Mr. Schneider expressed his support of requesting proposals for town-wide garbage collection.

Ms. Ravnitzky expressed her concerns for public safety given the amount of garbage trucks and their rate of speed traveling on the roads.

Supervisor Schmitt stated that he was in favor of all carter licenses expiring at the same time. He did not however, receive support for it to be included in the recent amendments to Chapter 95 of the Town Code. If it is now the intent of the Town Board to make this change, Chapter 95 must be again be amended and another Public Hearing held.

Supervisor Schmitt recommended that the license fees be prorated and all licenses amended to expire at the end of November to allow thirty days for completing the renewal process. Then on January 1<sup>st</sup> when the new rates are set, all the carting companies must comply. He noted that if the weather becomes an issue with regard to the inspections of the vehicles, they can be performed inside at the Highway Department garage.

Councilwoman McDonough stated that she supported it. However, Robert Vara, Engineering Projects Coordinator and members of the Police Department advised against it due to the lack of manpower to perform all of the required inspections at the same time. Discussion was held regarding the vehicle inspections.

Supervisor Schmitt suggested amending Chapter 95 so that all of the carter licenses expire at the same time during the course of the year. Councilwoman McDonough, Councilman Ravallo and Councilman Lombardi expressed their agreement.

Mr. Folchetti was called upon by Supervisor Schmitt to explain the process for amending Chapter 95. Mr. Folchetti stated that the revisions to Chapter 95 will have to be drafted as a proposed Local Law. A Public Hearing must be held, a SEQR determination made and then the Local Law may be enacted by the Town Board.

Mr. Folchetti noted that for the purposes of tonight, the Town Board must determine if they would like to keep this Pubic Hearing open for written submissions. He further noted that the process of gathering information to determine the rates and amending Chapter 95 are mutually exclusive events. Discussion was held regarding the period for written submissions.

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With no one else present wishing to be heard on the subject of the Public Hearing, on motion by Councilwoman McDonough, seconded by Councilman Ravallo, with all members of the Town Board present and in agreement, the Public Hearing was kept open for submissions until July 20, 2011.

**ADJOURNMENT**

All agenda items having been addressed, on motion by Supervisor Schmitt, seconded by Councilwoman McDonough, with all members present and in agreement, the Special Meeting was adjourned at 8:41 p.m. to the scheduled Work Session.

Respectfully submitted,

Ann Garris, Town Clerk