

Town of Lincoln
6886 Tuttle Road, Canastota, NY 13032
Town Board Meeting

May 12, 2021

6:00pm - 7:00pm - Wind & Solar Discussion for the Local Law Drafts

Call to order time: 6:53 pm

Pledge of Allegiance

Members Present: Supervisor Yvonne Nirelli, Councilmember Russell Blanchard, Councilmember Jayne Black, Councilmember Melissa During, Councilmember Doug Holdridge

Member Apologies: None

Others in Attendance: Town Clerk, Amy Becker, Codes Larry Cesario, MCSO Nicholas Baxter, MCSO Danielle Deep, Bill Graham

Others in Attendance Via Zoom: Peggy LeClair, Shaun LaVancher, Melody Smith, Pam, Jenn Farwell, Brenda's iPhone, Chuck Ghosin, Sebastian Piedmont, Joanne's iPhone, 315.697.3711, Mat Spendley, Zoom User, Julie Ann, James M. Jones, Pixel4xl, PMBecker, Kathy Graham, JSchoeck, Lori Russitano

Supervisor Nirelli welcomed all.

RESOLUTION #64-2021: Councilmember Doug Holdridge made a motion to accept April 14th and April 29th Minutes.

Councilmember Russell Blanchard seconded the motion.

Carried unanimously.

Clerk's Report: Read by Amy Becker, Town Clerk

RESOLUTION #65-2021: Councilmember Jayne Black made a motion to accept the April Clerk's Report

Councilmember Melissa During seconded the motion.

Carried unanimously.

Highway Supervisor's Report: Read by HWS Tony Domenicone, cost of Materials and Parts have gone up significantly. One plow run early in May and doing some Truck repair. Trimming Trees and shoulder maintenance.

New Business: Appearance Hearing - Attorney Sebastian Piedmont spoke about the issues at 7171 Old City Road, Canastota, NY, Report by Codes was turned in along with served notice. Codes Officer read his findings of the unsafe structure with illegal wood stove in house. House in inhabitable and unsafe. Codes would like the Town to take the position to clean it up. Attorney Sebastian would like the Town to read through the Order.

TOWN OF LINCOLN 66-2021 RESOLUTION, ORDER AND FINDINGS OF FACT AND DECISION OF THE TOWN BOARD IN THE MATTER OF

7171 Old County Road Canastota, New York 13032 (Tax Map No. 52.10-1-36) May 12, 2021

Pursuant to the New York State Property Maintenance Code Sections 103, 107, and 108, a hearing was held on May 12, 2021 in the Town Hall at 6886 Tuttle Rd, Canastota, New York 13032, at 7:00 p.m. pertaining to the aforementioned structure, alleged to be unlawful and unfit for human occupancy.

WHEREAS, upon completion of said hearing, the Town of Lincoln Town Board and Town Supervisor Yvonne Nirelli make the following findings of fact and it is hereby rendered:

FINDINGS OF FACT

1. A written Notice of Structure Which is Unfit for Human Occupancy and Intent of Codes Enforcement Officer to Post a “Do Not Occupy” Notice on Property/Structure was properly served upon the property owners and occupants Wayne Hopkins, Carol Hopkins, and Mark Hopkins on May 4, 2021, originally scheduling the hearing for May 12, 2021; and
2. Proof of service of the notice has been provided and sufficient time given to the property owner to appear and respond; and
3. The hearing having been held on May 12, 2021 beginning at 7:00 p.m. and accurate minutes from the meeting having been taken by the Town Clerk Amy Becker; and
- 4.

Property owners and occupants

appeared/failed to appear.

DECISION

The following constitutes the Decision of the Town Board and the Town Supervisor:

1. Upon the evidence submitted including the May 3, 2021 report of Town of Lincoln Codes Enforcement Officer Lawrence P. Cesario has established violations of New York State Property Maintenance Code Sections 107 and 108; and

2. The structure located on the property is in severe disrepair. The dwelling is unlawful, unsafe, a hazard, unfit for human habitation and dangerous to human life and a detriment to health;

3. The report prepared by Town of Lincoln Codes Enforcement Officer Lawrence P. Cesario (attached hereto and incorporated herein as Exhibit “1”) confirmed that the structure on the property is unlawful and unfit for human occupancy; and

4. The photographs taken by Town of Lincoln Codes Enforcement Officer Lawrence P. Cesario (attached hereto and incorporated herein as Exhibit “2”) at the time of service of the notice on May 4, 2021, depict the interior of the structure on the property and provide additional evidence that the structure is unlawful and unfit for human occupancy.

NOW THEREFORE IT IS ORDERED, that the structure is hereby deemed unlawful and unfit for human occupancy per New York State Property Maintenance Code Sections 103, 107, and 108, and the Town of Lincoln Codes Enforcement Officer may cause a notice to be posted that the structure is unfit for human occupancy (i.e., “Do Not Occupy” Notice); and it is further ORDERED, all costs and expenses incurred by the Town of Lincoln regarding these proceedings, including attorneys’ fees, as well as the cost of ascertaining the owners, occupants, and other interested parties, and service of process fees shall be charged to the owners or assessed against the land on which the structures are located; and it is further

ORDERED, that this original order and decision shall be filed in the Madison County Clerk’s Office against said premises as a lis pendens and a copy shall further be served upon the recorded property owners by either personal service or regular mail to the last known address of the owners as set forth in the Town of Lincoln Assessor’s Records.

SO ORDERED Dated: May 12, 2021

RESOLUTION #66-2021: Councilmember Doug Holdridge made a motion to approve the Resolution for the ORDER AND FINDINGS OF FACT AND DECISION OF THE TOWN BOARD IN THE MATTER OF 7171 Old County Road Canastota, New York 13032 (Tax Map No. 52.10-1-36) May 12, 2021

Councilmember Russell Blanchard seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

Code's ask about starting right away on the cleanup of the yard, Attorney Piedmont will look at the Local Law regarding this.

RESOLUTION #67-2021: Councilmember Russell Blanchard made a motion to have Supervisor Nirelli sign the Resolution for the ORDER AND FINDINGS OF FACT AND DECISION OF THE TOWN BOARD IN THE MATTER OF 7171 Old County Road Canastota, New York 13032 (Tax Map No. 52.10-1-36) May 12, 2021

Councilmember Doug Holdridge seconded the motion.

Carried unanimously.

RESOLUTION #68-2021: Councilmember Russell Blanchard made a motion to open the Public Hearing Regarding the Road and Highway Work Permit Law at 7:23pm

Councilmember Doug Holdridge seconded the motion.

Carried unanimously.

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County
Village

of Lincoln

Town
City

Local Law No. _____ of the year 2021.

A local law requiring work permits with respect to Town of Lincoln roads and highways
(Insert Title)

Be it enacted by the Town Board of the

County
City

of Lincoln as follows:

Town
Village

Section 1. Purpose

Town highways and the rights-of-way associated with them represent substantial assets of the Town of Lincoln. The Town Board is the trustee for these public thoroughfares, and the Town Board recognizes its obligation to protect the public health, safety and welfare of its residents and the public in general by insisting that any work performed in these highways, including, but not limited to, the placement of utility poles, lines, wires, guy wires and appurtenant facilities, be performed in a professional manner, with the work being completed as safely and expeditiously as possible. In order to attain this goal, the Town Board finds that it is necessary to enact a local law requiring those performing work in Town highways to obtain permits from the Town so that the Town can adequately monitor the work performed and ensure that it is performed with as least disruption to the public as possible, in as safe a manner as possible and returned to the way it was before the construction began.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 2.

Permits

Any person, institution or corporation desiring permanent or temporary access to a town highway shall obtain a town highway work permit from the Town Highway Superintendent prior to the commencement of construction. No person shall excavate in, under, over or through a Town Highway. Place any objects or facilities within a Town Highway, including, but not limited to utility poles, transmission and distribution wires, guy wires, transformers and switch boxes, or perform any construction within or otherwise interfere with a Town highway without first obtaining a permit for such work from the Highway Superintendent. Any such work performed shall fully comply with all conditions under which said permit is granted.

A. Application:

- (1) Applications for highway work permits shall be on such forms as determined and supplied by the Town Highway Superintendent and shall include such information as may be determined necessary by the Highway Superintendent to determine compliance with this local law and any other applicable codes, rules and regulations.
- (2) The applicant shall furnish with the application maps and plans detailing the work to be performed and the specific location of the work for which approval is requested. The Town Highway Superintendent may require such other additional documentation including but not limited to photographs, surveys or reports as the Highway Superintendent in his sole discretion shall deem appropriate.
- (3) All applicants for permits shall give at least two weeks' notice, in writing, to the Highway Superintendent, specifying the place, kind and approximate size of the excavation or work and the time required to do the work, except in cases of emergency, such as the sudden failure of a public utility pole or facility, in which case such notice shall be given to said Highway Superintendent as soon as possible and the applicant shall give prompt notice of the completion of its work to the Highway Superintendent.

- B. Issuance. At a reasonable time after the submission of a completed application, appropriate fee, as determined from time to time by resolution of the Town Board, and additional documentation, if necessary, the Town Highway Superintendent shall determine whether the application is in compliance with the provisions of this local law. Should compliance be determined, the Highway Superintendent shall issue a permit for the construction as specified on the application. An incomplete application or lack of sufficient information shall be cause for denial of the permit.

Section 3.

Definitions

For the purposes of this local law, the following words, phrases and terms and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular, words used in the singular number include the plural, and words in the masculine include the feminine. The word "shall" is always mandatory and not merely directory.

HIGHWAY SUPERINTENDENT

The Highway Superintendent of the Town of Lincoln.

PERSON

Any person, firm, partnership, association, corporation, company or organization of any kind.

TOWN

The Town of Lincoln.

TOWN BOARD

The Board of the Town of Lincoln.

TOWN HIGHWAY

All the land, public fixtures, public improvements and public facilities used, maintained or held for highway purposes located within the boundary lines of any real property within, upon, over and/or under which the Town has a right or interest, whether pursuant to ownership in fee, by easement, by permission, by use, by possession or by statute, irrespective of whether such property has been formally conveyed or dedicated to the Town or offered for dedication but not yet accepted or laid out by the Highway Superintendent. The term "highway" includes a street, avenue, road, square, place, alley, lane, boulevard, concourse, parkway, driveway, overpass and underpass and also includes all items appurtenant thereto, including but not limited to bridges, culverts, ditches, shoulders, signs, signals and sidewalks.

UTILITY

Any corporation, authority, or other entity or individual that provides electric, telephone, cable television, internet or any other telecommunications services.

Section 4. Exceptions

This local law shall not apply to the following:

- A. Any construction or excavation which has been contracted for by the Town Board or approved by the Town Board pursuant to another local law, ordinance, regulation or resolution.
- B. Highway repairs and maintenance performed at the direction of the Highway Superintendent.
- C. The replacement in kind in the same location of any existing utility pole or facility that has been damaged or has otherwise failed and such replacement is required in order to restore or maintain utility service to existing customers.

Section 5. Insurance and Indemnification Requirements

- A. The permittee shall be responsible for all damages resulting in bodily injury, including death, and/or property damage liability due to the installation, maintenance, use or existence of any facility of the permittee, or which arises out of the activities of the permittee, its contractors, subcontractors of either or both, agents or employees, in connection with any act or omission hereunder, and the permittee does hereby expressly agree to indemnify and save harmless the Town of Lincoln and/or the Highway Superintendent of the Town of Lincoln, and his representatives and employees, from any claims, suits, actions, damages and costs of every name and nature and description, arising out of or resulting from any act or omission hereunder of either the permittee or the Town of Lincoln and its agents and employees, and the permittee

does hereby further expressly agree to pay any damages because of injury to or destruction of part or all of any Town Highway owned and maintained by the Town of Lincoln, or which may be caused, directly or indirectly by any occurrence and arising out of the existence, maintenance or use of any facility or the matter and contents thereof as such facility, matter and contents are authorized for the installation, connection, maintenance, transportation or transmission on and across any Town highway.

- B. The permittee shall obtain a protective liability insurance policy issued to and covering the liability of the Town of Lincoln, the Town of Lincoln Highway Department and the Highway Superintendent, with respect to all operations under this permit by the permittee or by anyone acting by, through or for the permittee, including omission and supervisory acts of the Town of Lincoln. The limit of liability in such policy shall be not less than \$1,000,000 for all damages arising out of bodily injury (including death) and property damage. Such policy shall state that it will not be changed or canceled until 30 days written notice has been given to the Highway Superintendent or his representative. Unless expressly waived, in writing, by the Highway Superintendent, or his representative, the permittee shall furnish with the application filed, in order to obtain this permit, a certificate of insurance verifying the amounts of protective liability insurance. The enumeration in this permit of this kind and amount of insurance shall not abridge, diminish or affect the permittee's legal responsibility for the consequences of accidents arising out of or resulting from the operations of the permittee under this permit.

Section 6.

Fees and deposits.

- A. A cash undertaking or a certified check in an amount determined by the Highway Superintendent shall be deposited with the Supervisor of the Town of Lincoln at the time of the issuance of this permit, which shall be deemed, and shall be used as security so that the highway, or any part thereof, will be restored to its original condition where disturbed at the expense of the permittee, and as soon as the work has been completed, and the Highway Superintendent or his representative is hereby authorized to expend all or as much of such deposit as may be necessary for that purpose should the permittee neglect or refuse to perform the work.
- B. The permittee shall be responsible for any and all claims and damages arising out of operations by this permit which may result because of any dangerous conditions created by the existence of any debris or obstruction left on the pavement or roadside during the progress of the work which may be either within the highway, right-of-way or on adjacent property. Should the Highway Superintendent or his representative discover any hazardous condition so created, he may issue verbal instructions or written notice to the permittee to eliminate the cause. In the event that the permittee fails to take immediate action to remove such hazardous condition, the Highway Superintendent reserves the right to take such action as he may deem necessary to safeguard the public. All cost resulting therefrom shall be paid by the permittee and shall be deducted from any deposit on file or any surety given by the permittee. In the event that the expenses exceed the amount of any surety bond or deposit, the permittee shall promptly pay the balance due.

Section 7.

General rules and regulations.

The applicant shall comply with the following rules and regulations.

- A. Work authorized by this permit shall be commenced within 30 days from the date of permit and shall be performed in a workmanlike and expeditious manner without unreasonable delay or interference with public travel. The permittee shall provide all necessary and suitable safeguards so as to reduce to an absolute minimum any dangerous condition hazardous to life, limb or property.
- B. The permittee shall submit, with the application filed in order to obtain a permit to said Highway Superintendent, or his representative, a detailed plan of any structure(s) or facilities to be built, placed or installed, if any, with a description of the proposed method of construction before any work hereunder is started.
- C. Traffic shall be maintained and flagmen provided by the applicant and/or permittee during the period of time the work is in progress and until its final completion. The applicant and/or permittee assume full responsibility for all traffic control and are required to place adequate warning signs at least 300 feet on each side of the work site.
- D. The permittee expressly agrees that the rights of abutting property owners in fee to the center line of the Highway shall not be encroached upon, and that any utility and communications lines, wires and pipes, including drainage, sewer and/or water pipes or appurtenances which are laid under this permit shall be placed at least four feet below, and in such a manner as in no way to interfere with the pavement, shoulders or drainage ditches of the Highway. Upon the completion of the work, the highway shall be left in as good condition as before the work was performed and to the complete satisfaction of the Highway Superintendent.
- E. The applicant and permittee agree to keep in good repair all pipes, hydrants or appurtenances which may be placed within the bounds of the highway under the terms of this permit, and agrees to save the Town harmless from any and all damages which may accrue by reason of and location in the highway whether due to the negligence of said permittee or the negligence of the Town of Lincoln, its agents, servants and employees, and upon notice from the Highway Superintendent, said permittee agrees to make any and all repairs required for the protection and preservation of the highway; and said applicant and permittee further agrees that upon the failure of said applicant, and/or permittee to make such repairs, they may be made by the highway Superintendent at the sole expense of the applicant and such expense shall be a prior lien upon the land benefited by and from the use of the highway for such pipes, hydrants and appurtenances. It is further agreed by the applicant and permittee that any injury or disturbance of the paved portion of the highway, its shoulders or drainage ditches, which may occur hereafter by reason of the laying of any drainage, sewer or water pipes and their appurtenances, shall be repaired and at the expense of the applicant and permittee and to the complete satisfaction of the Highway Superintendent.
- F. Written permission to close a road to traffic must first be secured from the Highway Superintendent, and such permission shall only be valid for the time specified. Such written approval may require the permittee to give notification of such closing to various public agencies and to the general public.

- G. All openings shall be covered or filled overnight unless permission is obtained from the Highway Superintendent and the opening is adequately protected. The applicant shall open no greater part of such road than shall be reasonably necessary.
- H. Any road, when opened and excavated, shall be promptly backfilled and restored to specifications approved by the Highway Superintendent.
- I. Where multiple openings are made, the applicant shall resurface with one strip to prevent a washboard effect.
- J. Any other requirement deemed necessary by the Highway Superintendent for the particular situation.

Section 8. Special Requirements for Utility Poles and Facilities

No new utility poles, guy wires, ground mounted transformers, switch boxes or other above ground facilities shall be constructed within the Town Highways unless the applicant has first obtained the written consent of the Town Highway Superintendent after demonstrating to the reasonable satisfaction of the Highway Superintendent that there is no practical physical access to place wires and/or other facilities on existing poles and that underground installation is not practicably feasible.

Section 9. Right to revoke permit.

The Highway Superintendent, or his duly authorized representative, shall have the right to revoke or annul a permit at any time without the necessity of a hearing or showing cause if he determines that false or inaccurate information was provided at the time of the application or thereafter, or in the event work is proceeding in violation of the provisions of this local law or the directives of the Highway Superintendent.

Section 10. Liability

The adoption of this local law is to provide a minimum procedure for the regulation of construction within town highways. Its adoption and enforcement is not intended to relieve persons carrying out such construction in the town from any obligation or responsibility to avoid the creation of dangerous conditions. Additionally, the adoption, administration or enforcement of this local law shall not act as the basis for any claim of any nature against the Town of Lincoln.

Section 11. Penalties for offenses.

Any person, firm or corporation violating any of the provisions of this local law shall, upon conviction thereof, be responsible for all fees that were due under the fee schedule of this chapter and be subject to a fine not exceeding \$250.00 or imprisonment for up to fifteen days, or both. Each day a violation exists shall constitute a separate offense.

Section 12. Severability.

If any paragraph, section, sentence or portion of a sentence of this local law shall be found and determined to be invalid, unlawful and/or unconstitutional, such determination shall

not invalidate or void any other paragraph, section, sentence or portion thereof, and such other parts thereof shall remain in full force and effect unless and until legally revoked, modified and/or amended.

Section 13.

Effective Date

This local law shall take effect immediately upon its filing with the Secretary of the State.

(Complete the certification in the paragraph that applies to the filing of this local law and Strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2021 of the ~~(County)(City)(Town)(Village)~~ of Lincoln was duly passed by the Town Board on May 12, 2021, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(City)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(City)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved) (not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. (Elective Chief Executive Officer*) Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified elector voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the ~~(County)(City)(Town)(City)~~ of _____ was duly passed by the _____ on _____ 20____, and was (approved) (not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. (Elective Chief Executive Officer*) Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

• Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or City, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36) (37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special) (general) election held on _____ 20_____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the County of _____, State of New York, having been submitted to electors of the General Election of November _____ 20_____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in Paragraph 1, above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: _____

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF MADISON

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

Attorney for the Town
Title

County
Village
of _____ Lincoln _____

Town
City

Date: _____

Discussion was had.

RESOLUTION #69-2021: Councilmember Russell Blanchard made a motion to Close the Public Hearing Regarding the Road and Highway Work Permit Law at 7:32pm

Councilmember Jayne Black seconded the motion.

Carried unanimously.

RESOLUTION #70-2021: Councilmember Doug Holdridge made a motion to Adopt the Local Law Work Permit for the Town Highways

Councilmember Melissa During seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

WHEREAS, at the request of the Town Supervisor, the attorney for the Town has prepared and presented a proposed local law entitled, “A local law requiring work permits with respect to Town of Lincoln roads and highways”, and

WHEREAS, the proposed local law is intended to require private entities desiring to do any work within town highway rights of way to first obtain a permit from the Town Highway Superintendent and comply with other conditions set forth in this local law, and

WHEREAS, upon notice duly published and posted as required, a public hearing on this local law was held, which public hearing was, or is hereby closed, and

WHEREAS, the adoption of this local law is not an action that may have an effect on the environment as defined by the implementing regulations of the New York State Environmental Quality Review Act and is therefore not an action subject to SEQRA.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

After due deliberation, the Board finds it in the best interest of the Town of Lincoln to adopt this local law, and does hereby adopt this local law entitled, “A local law requiring work permits with respect to Town of Lincoln roads and highways”. The Town Clerk is hereby directed to enter said Local Law in the minutes of this meeting, and to give due notice of the adoption of said Local Law to the Secretary of State.

Dated: May 12, 2021

RESOLUTION #71-2021: Councilmember Russell Blanchard made a motion to open the Public Hearing Regarding the Spectrum Agreement at 7:33pm
Councilmember Jayne Black seconded the motion.
Carried unanimously.

FRANCHISE AGREEMENT

This Franchise Agreement (“Franchise”) is between the Town of Lincoln, New York, hereinafter referred to as the “Grantor” and Spectrum Northeast, LLC, an indirect subsidiary of Charter Communications, Inc., hereinafter referred to as the “Grantee.”

WHEREAS, in a full public proceeding affording due process to all parties, Grantor considered and found adequate and feasible Grantee’s plans for constructing and operating the cable television system, and Grantor considered and determined that the financial condition, character, legal and technical ability of the Grantee are sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community; and

WHEREAS, the Grantor finds that the Grantee has substantially complied with the material terms of the current Franchise under applicable laws, that this Franchise complies with New York Public Service Commission’s (“NYPSC”) franchise standards under Title 16, Chapter VIII, Part 895 of the Official Compilation of Codes, Rules and Regulations of the State of New York, and that the grant of a nonexclusive franchise to Grantee is consistent with the public interest; and

WHEREAS, the Grantor and Grantee have complied with all federal and State-mandated procedural and substantive requirements pertinent to this franchise renewal; and

WHEREAS, Grantor desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein;

NOW, THEREFORE, the Grantor and Grantee agree as follows:

SECTION 1 **Definition of Terms**

1.1 Terms. For the purpose of this franchise the following terms, phrases, words and their derivations shall have the meaning ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time (the “Cable Act”), unless otherwise defined herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- A. “Cable System,” “Cable Service,” and “Basic Cable Service” shall be defined as set forth in the Cable Act.
- B. “Board” shall mean the governing body of the Grantor.
- C. “Cable Act” shall mean the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq.

- D. “Channel” shall mean a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel.
- E. “Equipment” shall mean any poles, wires, cable, antennae, underground conduits, manholes, and other conductors, fixtures, equipment and other facilities used for the maintenance and operation of physical facilities located in the Streets, including the Cable System.
- F. “FCC” shall mean the Federal Communications Commission and any successor governmental entity thereto.
- G. “Franchise” shall mean the non-exclusive rights granted pursuant to this Franchise to construct operate and maintain a Cable System along the public ways within all or a specified area in the Franchise Area.
- H. “Franchise Area” shall mean the geographic boundaries of the Grantor, and shall include any additions thereto by annexation or other legal means.
- I. “Gross Revenue” means all revenues, as determined in accordance with generally accepted accounting principles (“GAAP”), received directly or indirectly by the Grantee from the operation of the Cable System to provide Cable Services, including but not limited to Basic Cable Service, installation, disconnection and reconnection services, on-demand, standard, digital and premium tiers of Cable Service, late or delinquent fee charges, repair calls, equipment charges, locally-derived advertising revenues less commissions paid to third parties that are not affiliated entities; revenues or commissions from locally-derived home shopping channels, and leased access in the Franchise Area, provided, however, that such phrase shall not include: (1) any taxes, fees or assessments collected by the Grantee from Subscribers for pass-through to a government agency, including, without limitation, any state or federal regulatory fees, the franchise fee, or any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law. Should revenue from any service provided by Grantee over the Cable System be classified as a Cable Service by a final determination or ruling of any agency or court having jurisdiction, after the exhaustion of all appeals related thereto, the Grantor shall be entitled in the manner prescribed under applicable state law to include revenue from Grantee’s provision of such service as Gross Revenue, and Grantee shall include revenue from such service as Gross Revenue on a going forward basis commencing within sixty (60) days of the date of issuance of an order from the NYPSC approving such amendment.
- J. “Person” shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- K. “Service Area” shall mean the area described in subsection 6.1 herein.
- L. “Standard Installation” shall mean installations to residences and buildings that are located up to 150 feet from the point of connection to Grantee’s existing distribution system.
- M. “State” shall mean the State of New York.
- N. “Street” shall include each of the following located within the Franchise Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys,

sidewalks, circles, drives, easements, rights of way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Franchise Area, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, extending, repairing and maintaining the Cable System.

- O. "Subscriber" shall mean any Person lawfully receiving Cable Service from the Grantee.

SECTION 2 **Grant of Franchise**

2.1 Grant. The Grantor hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee subject to the terms provided herein, to erect, construct, extend, operate and maintain in, upon, along, across, above, over and under the Streets, now in existence and as may be created or established during the term of this Franchise, all Equipment, including the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal or State law.

2.2 Term. The Franchise and the rights, privileges and authority hereby granted shall be for an initial term *of ten (10)* years, commencing on the Effective Date of this Franchise as set forth in Section 15.13.

2.3 Police Powers. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance necessary to the safety, health, and welfare of the public, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's lawful exercise of its general police power, the Grantor may not take any unilateral action which materially changes the mutual promises in this contract.

2.4 Restoration of Municipal Property. Any municipal property damaged or destroyed by Grantee shall be promptly repaired or replaced by the Grantee, at its sole cost and expense, and restored to serviceable condition reasonably comparable to the condition prior to such damage or destruction.

2.5 Cable System Franchise Required. No Cable System shall be allowed to occupy or use the streets or public rights-of-way of the Franchise Area or be allowed to operate without a Cable System Franchise or as otherwise required by applicable law.

SECTION 3 **Franchise Renewal**

3.1 Procedures for Renewal. The Grantor and the Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, or any such successor statute.

SECTION 4 **Indemnification and Insurance**

4.1 Indemnification. The Grantee shall, by acceptance of the Franchise granted herein, defend the Grantor, and, indemnify its officers, boards, commissions, agents, and employees for all

claims for injury to any Person or property caused by the negligence of Grantee in the construction or operation of the Cable System to the fullest extent of the law, provided that the Grantor gives the Grantee written notice of its obligation to indemnify Grantor at least ten (10) calendar prior to the deadline for responding to the claim or action, and if no such deadline exists, within thirty (30) days of Grantor's receipt of the claim or action. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determines in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify the Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of the Grantor or for the Grantor's use of the Cable System, including any PEG channels.

4.2 Insurance.

A. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non-owned hired autos	\$1,000,000 per occurrence Combined Single Limit
Umbrella Liability	\$5,000,000 per occurrence

B. The Grantor shall be added as an additional insured, arising out of work performed by Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage. Such insurance shall be issued on a primary, non-contributory basis.

C. Grantee shall provide a Certificate of Insurance within 30 days of the Effective Date. The Grantee shall furnish the Grantor with additional current certificates of insurance evidencing such coverage upon request. The Certificate of Insurance shall not include any language impacting the effectiveness and applicability of the coverage. Such insurance policy shall require that the Grantor be notified thirty (30) days prior to any expiration or cancellation.

SECTION 5
Service Obligations

5.1 No Discrimination. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers, Channel users, or general citizens on the basis of race, color, religion, national origin, age or sex. Grantee shall not deny access to Cable Service to any group of potential residential subscribers because of the income of the residents of the local area in which such group resides.

5.2 Privacy. The Grantee shall fully comply with the privacy rights of Subscribers as contained in Cable Act Section 631 (47 U.S.C. § 551).

SECTION 6
Service Availability

6.1 Service Area. Subject to applicable law, the Grantee shall continue to provide Cable Service to all residences within the Franchise Area where Grantee currently provides Cable Service (the “Service Area”) in accordance with the provisions of Section 895.5 of the regulations of the NYPSC. Grantee shall have the right, but not the obligation, to extend the Cable System into any other portion of the Franchise Area, including annexed areas. Cable Service offered to Subscribers pursuant to this Franchise shall be conditioned upon Grantee having legal access on reasonable terms and conditions to any such Subscriber’s dwelling unit or other units wherein such Cable Service is provided.

6.2 Abandonment of Service. Grantee shall not abandon any Cable Service or portion thereof without the Grantor’s written consent.

6.3 New Development Underground. In cases of new construction or property development where utilities are to be placed underground, the Grantor agrees, where reasonable and practicable, to require as a condition of issuing a permit for open trenching to any developer or property owner that such developer or property owner give Grantee at least thirty (30) days prior written notice of such construction or development, and of the particular dates on which open trenching will be available for Grantee’s installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee’s expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if Grantee fails to install its conduit, pedestals and/or vaults, and laterals within fifteen (15) working days of the date the trenches are available, as designated in the written notice given by the developer or property owner, then should the trenches be closed after the fifteen-day period, the cost of new trenching is to be borne by Grantee.

6.4 Annexation. The Grantor shall promptly provide written notice to the Grantee of its annexation of any territory which is being provided Cable Service by the Grantee or its affiliates. Such annexed area will be subject to the provisions of this Franchise upon sixty (60) days ‘written notice from the Grantor, subject to the conditions set forth below and Section 6.1 above. The Grantor shall also notify Grantee in writing of all new street address assignments or changes within the Franchise Area. Grantee shall within ninety (90) days after receipt of the annexation notice, pay the Grantor franchise fees on revenue received from the operation of the Cable System to provide Cable Services in any area annexed by the Grantor if the Grantor has provided a written annexation notice that includes the addresses that will be moved into the Franchise Area in an Excel format or in a format that will allow Grantee to change its billing system. If the annexation notice does not include the addresses that will be moved into the Franchise Area, Grantee shall pay franchise fees within ninety (90) days after it receives the annexed addresses as set forth above. All notices due under this section shall be sent by certified mail, return receipt requested to the addresses set forth in Section 15.7 with a copy to the Director of Government Affairs. In any audit of franchise fees due under this Franchise, Grantee shall not be liable for franchise fees on annexed areas unless and until Grantee has received notification and information that meets the standards set forth in this section.

SECTION 7
Construction and Technical Standards

7.1 Compliance with Codes. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code.

7.2 Construction Standards and Requirements. Grantee shall construct and maintain its Equipment using materials of good and durable quality and shall ensure that all work involved in the construction, installation, maintenance, and repair of the Cable System shall be performed in a timely, safe, thorough and reliable manner.

7.3 Safety. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

7.4 Network Technical Requirements. The Cable System shall be designed, constructed and operated so as to meet those technical standards adopted by the FCC relating to Cable Systems contained in part 76 of the FCC's rules and regulations as may be amended from time to time. The Cable System shall provide for a minimum Channel capacity of at least seventy-seven (77) Channels. Grantee shall maintain the Cable System at the same or enhanced level during the term of the Franchise.

SECTION 8 **Conditions on Street Occupancy**

8.1 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property except in compliance with the terms and conditions of any generally applicable, local laws and regulations of Grantor.

8.2 Underground Construction. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. In the event Grantor or any agency thereof directly or indirectly reimburses any utility for the placement of cable underground or the movement of cable, Grantee shall be similarly reimbursed.

8.3 Construction Codes and Permits. Grantee shall obtain all legally required permits, including any permissions and/or consents specifically required pursuant to this Franchise, before commencing any construction work, including the opening or disturbance of any Street within the Franchise Area, provided that such permit requirements are of general applicability and such permitting requirements are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Franchise Area. The Grantor shall reasonably cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Streets now in existence and as may be created or established during the term of this Franchise, in a manner that does not disrupt the Grantor's ability to maintain the public thoroughfares and public infrastructure.

8.4 System Construction. All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

8.5 Restoration of Public Ways. Grantee shall, at its own expense, promptly restore any damage or disturbance caused to the public way as a result of its operation, construction, or maintenance of the Cable System to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

8.6 Tree Trimming. Grantee or its designee shall provide notice and receive permission from the Town Highway Superintendent, which permission shall not be unreasonably withheld, prior to commencing planned tree trimming on public property and Streets at its own expense as may be necessary to protect its wires and facilities. Emergency restoration required trimming will be performed as necessary.

8.7 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance written notice, to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of Grantee when lawfully required by the Grantor pursuant to its police powers. Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor rights-of-way are responsible for the costs related to the relocation of their facilities.

8.8 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Street as necessary any property of the Grantee, provided that the expense of such is paid by any such Person benefiting from the relocation and the Grantee is given reasonable advance written notice to prepare for such changes. The Grantee may require such payment in advance. For purposes of this subsection, “reasonable advance written notice” shall be no less than ten (10) business days in the event of a temporary relocation and no less than sixty (60) days for a permanent relocation.

8.9 Reimbursement of Costs. If funds are available to any Person using the Streets for the purpose of defraying the cost of relocation and undergrounding described above, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall use reasonable best efforts to assist Grantee with making application for such funds on behalf of the Grantee.

8.10 Emergency Use. Grantee shall comply with 47 U.S.C. 544(g) and all regulations issued pursuant thereto with respect to an Emergency Alert System (“EAS”).

SECTION 9 **Service and Rates**

9.1 Phone Service. The Grantee shall maintain a toll-free telephone number and a phone service operated to receive complaints and requests for repairs or adjustments at any time.

9.2 Notification of Service Procedures. The Grantee shall furnish each Subscriber at the time service is installed, written instructions that clearly set forth information concerning the procedures for making inquiries or complaints, including the Grantee’s name, address and local telephone number. Grantee shall give the Grantor notice of any changes in rates, programming services or Channel positions in accordance with applicable law.

9.3 Rate Regulation. The rates and charges for Cable Service provided pursuant to this Franchise shall be subject to regulation in accordance with federal law. If and when exercising rate regulation, the Grantor shall abide by the terms and conditions set forth by the FCC. Nothing

herein shall be construed to limit the Grantee's ability to offer or provide bulk rate discounts or promotions.

9.4 Customer Service. Grantee shall comply with the cable customer service and consumer protection standards of the FCC and NYSPC. Any bill, notice or other communication provided by or issued by Grantee to any Subscriber may be provided or issued in accordance with applicable law.

9.5 Continuity of Service. It shall be the right of all Subscribers to continue receiving Cable Service insofar as their financial and other obligations to the Grantee are honored, and subject to Grantee's rights under Section 15.2 of this Franchise.

SECTION 10 **Franchise Fee**

10.1 Amount of Fee. Grantee shall pay to the Grantor an annual franchise fee in an amount equal to four percent (4%) of the annual Gross Revenue. Franchise fees may be passed through to Subscribers as a line item on Subscriber bills or otherwise as Grantee chooses, consistent with federal law. The amount of franchise fee and the method of calculation shall be equal when compared to the amount or method of calculation of the franchise fee in any other cable franchise or authorization to provide video service granted by Grantor. In the event any other cable franchise or authorization to provide video service provides for a lesser franchise fee than this Franchise, Grantee's obligation to pay a franchise fee under this Section 10.1 shall be reduced by an equivalent amount.

10.2 Payment of Fee. Payment of the fee due the Grantor shall be made on a quarterly basis, within forty-five (45) days of the close of each calendar quarter. The payment period and the collection of the franchise fees that are to be paid to the Grantor pursuant to the Franchise shall commence sixty (60) days after the Effective Date of the Franchise as set forth in Section 15.13. Grantee shall pay an interest charge of prime plus 1% on any late payment of franchise fees. In the event of a dispute, the Grantor, if it so requests, shall be furnished a statement of said payment, reflecting the Gross Revenues and the applicable charges.

10.3 Accord and Satisfaction. No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for additional sums payable as a franchise fee under this Franchise. All amounts paid shall be subject to audit and recomputation by Grantor.

10.4 Bundled Services. If Grantee charges a combined or "bundled" rate for a package of services which includes Cable Services subject to the franchise fee and other services which are not subject to the franchise fee, the franchise fee shall be imposed on the portion of the bundled charge applicable to the services subject to the franchise fee as reflected in the books and records of Grantee, in accordance with GAAP. Any discounts applied to bundled rates shall be spread proportionately among bundled service.

10.5 Limitation on Recovery. The period of limitation for recovery of any franchise fee payable hereunder shall be six (6) years from the date on which payment by the Grantee was due.

SECTION 11 **Transfer of Franchise**

11.1 Franchise Transfer. Grantee shall provide at least sixty days' notice to Grantor prior to completion of a transaction that results in the sale, transfer, or assignment of the Franchise. The

Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Grantor, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System to secure indebtedness. Within thirty (30) days of receiving a request for review covered by this Section, the Grantor shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Grantor has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Grantor shall be deemed given.

SECTION 12 **Records**

12.1 Inspection of Records. Grantee shall permit any duly authorized representative of the Grantor, upon receipt of advance written notice, to examine during normal business hours and on a non-disruptive basis any and all of Grantee's records pertaining to Grantee's provision of Cable Service in the Franchise Area maintained by Grantee as is reasonably necessary to ensure Grantee's compliance with the material terms of the Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Grantor. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years, except for books and records related to the calculation of Gross Revenues and the payment of Franchise Fees, which Grantee shall maintain for six (6) years. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act. The Grantor agrees to treat as confidential any books, records or maps that constitute proprietary or confidential information to the extent Grantee makes the Grantor aware of such confidentiality. If the Grantor believes it must release any such confidential books or records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential, as set forth above, to any Person.

SECTION 13 **Public Education and Government (PEG) Access**

13.1 PEG Access. Grantee shall make available channel capacity for non-commercial, video programming for public, educational and governmental ("PEG") access use in accordance with Section 895.4 of the NYPSR regulations and will comply with the minimum standards set forth therein. Such PEG channel capacity may be shared with other localities served by Grantee's cable system, and Grantor hereby authorizes Grantee to transmit PEG access programming authorized herein to such other localities. The tier of service on which such PEG channel(s) may be placed shall be determined by Grantee in accordance with applicable law.

SECTION 14 **Enforcement or Revocation**

14.1 Notice of Violation. If the Grantor believes that the Grantee has not complied with the terms of the Franchise, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

14.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps being taken and the projected date that they will be completed.

14.3 Public Hearing. If the Grantee fails to respond to the Violation Notice received from the Grantor, or if the default is not remedied within the cure period set forth above, the Board shall schedule a public hearing if it intends to continue its investigation into the default. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Clerk of the Grantor in a newspaper of general circulation within the Grantor in accordance with subsection 15.8 hereof. At the hearing, the Board shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Board shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Board *de novo*. The Grantee may continue to operate the Cable System until all legal appeals procedures have been exhausted.

14.4 Enforcement. Subject to applicable federal and State law, in the event the Grantor, after the hearing set forth in subsection 14.3 above, determines that the Grantee is in default of any provision of the Franchise, the Grantor may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise itself in accordance with subsection 14.5 below.

14.5 Revocation.

- A. Prior to revocation or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise. The public hearing shall be conducted in accordance with the requirements of Section 14.3 above.
- B. Notwithstanding the above provisions, the Grantee reserves all of its rights under federal law or regulation.

- C. At the termination of the Franchise Term if renewal has been finally denied in accordance with Federal law, or upon revocation of the Franchise, as provided for herein, the Grantor shall have the right to require Grantee to remove, at Grantee's expense, all or any portion of the Cable System from Streets and public property within the Franchise Area. In so removing the Cable System, Grantee shall refill and compact at its own expense any excavation that shall be made and shall leave all Streets and public property in as good a condition as that prevailing prior to Grantee's removal of the Cable System, and without affecting, altering or disturbing in anyway electric, telephone or utility, cables wires or attachments. The Grantor, or its delegate, shall have the right to inspect and approve the condition of such Streets and public property after removal. The insurance and indemnity provisions of this Agreement shall remain in full force and effect during the entire term of removal.

SECTION 15 **Miscellaneous Provisions**

15.1 Compliance with Laws. Grantor and Grantee shall conform to all applicable state and federal laws and rules regarding cable television as they become effective. Grantee shall also conform with all generally applicable Grantor ordinances, resolutions, rules and regulations heretofore or hereafter adopted or established during the entire term of the Franchise. In the event of a conflict between Grantor ordinances, resolutions, rules or regulations and the provisions of this Franchise, the provisions of this Franchise shall govern.

15.1.1 Employment Practices. Grantee will not refuse to hire, nor will it bar or discharge from employment, nor discriminate against any person in compensation or in terms, conditions, or privileges of employment because of age, race, creed, color, national origin, or sex.

15.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers (outside of Grantee's control) to service, maintain or monitor their utility poles to which Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

15.3 Minor Violations. Furthermore, the parties hereby agree that it is not the Grantor's intention to subject the Grantee to forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties or hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Subscribers. By way of description, but not limitation, an example of such a minor violation would include Grantee's failure to provide a certificate of insurance as required by section 4.2.

15.4 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

15.5 Equal Protection. The Franchise herein granted is non-exclusive and the Grantor specifically reserves the right to grant, at any time, additional franchises to any other provider of cable services or video services (without regard to the technology used to deliver such services). If any

such provider of cable services or video services is lawfully authorized by the Grantor to provide such services using facilities located wholly or partly in the public rights-of-way of the Grantor, the Grantor shall ensure that the terms applicable to such other provider are no more favorable or less burdensome than those applicable to Grantee. If the authorization applicable to such other provider contains franchise fee, PEG, free service, right-of-way, or other terms imposing monetary or regulatory burdens that are more costly or less burdensome than the corresponding obligations imposed upon Grantee, Grantor shall, within thirty (30) days of a written request from Grantee, modify this Franchise to insure that the corresponding obligations applicable to Grantee are no more costly or burdensome than those imposed on the new competing provider. If the Grantor fails to make modifications consistent with this requirement, Grantee agrees not to enforce such corresponding obligations in this Franchise beyond the requirements imposed by the less costly or less burdensome obligations in such competing provider's authorization. As an alternative to the equal protection procedures set forth herein, the Grantee shall have the right and may choose to have this Franchise with the Grantor be deemed expired thirty (30) days after written notice to the Grantor. Nothing in this Franchise shall impair the right of the Grantee to terminate this Franchise and, at Grantee's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity. Nothing in this Section 15.5 shall be deemed a waiver of any remedies available to Grantee under federal, state or municipal law, including but not limited to Section 625 of the Cable Act, 47 U.S.C. § 545.

15.6 Change in Law. Notwithstanding any other provision in this Franchise, in the event any change to state or federal law occurring during the term of this Franchise eliminates the requirement for any person desiring to provide video service or Cable Service in the Franchise Area to obtain a franchise from the Grantor, then Grantee shall have the right to terminate this Franchise and operate the Cable System under the terms and conditions established in applicable law. If Grantee chooses to terminate this Franchise pursuant to this provision, this Franchise shall be deemed to have expired by its terms on the effective date of any such change in law, whether or not such law allows existing franchise agreements to continue until the date of expiration provided in any existing franchise.

15.7 Notices. Unless otherwise provided by federal, State or local law, all notices pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express to the designated address provided below. As set forth above, notice served upon the Grantor shall be delivered or sent to:

Grantor: Town of Lincoln
Attn: Town Supervisor
6886 Tuttle Road
Canastota, NY 13032

Grantee: Charter Communications
Attn: Director, Government Affairs
6005 Fair Lakes Rd
East Syracuse, NY 13057

Copy to: Charter Communications
Attn: Vice President, Government Affairs
601 Massachusetts Ave NW, Suite 400W
Washington, DC 20001

15.8 Public Notice. Minimum public notice of any public meeting relating to this Franchise or any such grant of additional franchises, licenses, consents, certificates, authorizations, or exemptions by the Grantor to any other Person(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way shall be by publication at least once in a newspaper of general circulation in the area at least ten (10) days prior to the meeting and a posting at the administrative buildings of the Grantor.

15.8.1 Grantor shall provide written notice to Grantee within ten (10) days of Grantor's receipt from any other Person(s) of an application or request for a franchise(s), license(s), consent(s), certificate(s), authorization(s), or exemption(s) to provide Cable Services, video services, or other television services utilizing any system or technology requiring use of the public rights of way. Any public hearings to consider such application or request shall have the same notice requirement as outlined in Paragraph 15.8 above.

15.9 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

15.10 Entire Agreement. This Franchise and any Exhibits hereto constitute the entire agreement between Grantee and the Grantor and they supersede all prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

15.11 Administration of Franchise. The Board, or such other person as may be designated and supervised by the Board, is responsible for the continuing administration of the Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Grantor and the Grantee. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

15.12 NYPSC Approval. This Franchise is subject to the approval of the NYPSC. Grantee shall file an application for such approval with the NYPSC within sixty (60) days after the date the Franchise is approved by Grantor and accepted by Grantee. Grantee shall also file any necessary notices with the FCC.

15.13 Effective Date. The Franchise granted herein will take effect and be in full force from the date of approval by the NYPSC ("Effective Date"). If any fee or grant that is passed through to Subscribers is required by this Franchise, other than the franchise fee, such fee or grant shall go into effect sixty (60) days after the Effective Date of this Franchise.

15.14 No Third Party Beneficiaries. Nothing in this Franchise is intended to confer third-party beneficiary status on any person other than the parties to this Franchise to enforce the terms of this Franchise.

Considered and approved this ___ day of _____, 2021.

Town of Lincoln

Signature: _____

Name/Title: Yvonne Nirelli, Town Supervisor

Accepted this ___ day of _____, _20_____, subject to applicable federal and State law.

Spectrum Northeast LLC, By Its Manager, Charter Communications, Inc.

Signature: _____

Name/Title: _____

RESOLUTION #72-2021: Councilmember Russell Blanchard made a motion to Close the Public Hearing Regarding the Spectrum Agreement at 7:39 pm Councilmember Jayne Black seconded the motion.

Carried unanimously.

RESOLUTION #73-2021: Councilmember Russell Blanchard made a motion to approve the Spectrum Franchise Agreement.

Councilmember Melissa During seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

Code Officer's Report: Turned into clerk, emailed to Councilmembers on file at TOL.

Dog Officer's Report: Turned into clerk, emailed to Councilmembers on file at TOL.

Supervisor’s Financials Report:

April General Fund: Beginning Balance: \$83,251.35, Receivables: \$7,918.26
Disbursements: \$60,441.09, General Savings: \$504,404.35, Ending Balance:
\$30,728.52

April Court Fund: Beginning Balance: \$3,301.75, Distributions: \$582.00,
Receivables: \$612.25, Ending Balance: \$3,332.00

April Highway Fund: Beginning Balance: \$250,028.52, Receivables: \$1,838.62
Disbursements: \$34,722.89, Savings: \$437,058.08, Ending Balance: \$217,144.25,
HWER: \$

April Street Lighting Fund: Beginning Balance: \$7,115.30, Receivables: \$.12
Disbursements: \$235.25, Ending Balance: \$6,880.17

RESOLUTION #74-2021: Councilmember Doug Holdridge made a motion to accept the
Supervisor’s Report

Councilmember Jayne Black seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

Correspondence:

- Supervisor Nirelli stated that we did get the AUD and will be posted.
- 2021 Annual Conference info for Perma
- Lease agreement allowing the BOE, 1 yr (June 1, 2021 – May 31, 2022) for having access to TOL Town Hall for Voting. Primary June 22, 202, and November 2, 2021. They are asking how to have access to the Building. They can use the Coded Entry.

RESOLUTION #75-2021: Councilmember Russell Blanchard made a motion to accept the BOE
Lease Agreement with the corrected date changes

Councilmember Melissa During seconded the motion.

Carried unanimously.

- Still waiting to see from the State what we can use for the American Rescue Plan.
- OCWA is still trying to say there is a Toilet running or faucet to use up the excess water.

Old Business:

- A. Supervisor Nirelli discussed that Hylander Construction is beginning on the Water Project. They will level, topsoil and seed next to the school house after they are finished. The targets complete date is the Tuesday after Labor Day. Progress reports will be posted on the website. Tony stated that they have not come to him for Road Permits. Supervisor Nirelli will let the County know that they have not got the permits from the Town.
- B. The Interest Survey for a new Water District is made up of multiple questions regarding water where they are. These will be going out at the end of May.
- C. Old School House real estate documents have been signed. They are listing it for \$59,900. Mover’s quote to move all the stuff at the town hall, can do tomorrow or Friday would cost \$1500. Without the safes it would be \$975. Doug’s quote from Rock Ridge Contracting, was \$600 and moving the judge’s bench would be an extra \$100.

RESOLUTION #76-2021: Councilmember Russell Blanchard made a motion to use Rock Ridge Contracting to move the remaining items at the Old school house to the new town hall and the other mover to move the safes.

Councilmember Melissa During seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

Supervisor Nirelli said that the Juke Box was moved and the Door was unlocked. Doug Holdridge said he would like the Juke Box as it belonged to his family originally. Also did we want to sell the old wooden desk from upstairs.

RESOLUTION #77-2021: Councilmember Russell Blanchard made a motion to allow the Juke Box to go back to the Holdridge family.

Councilmember Jayne Black seconded the motion.

Carried, Doug abstained

RESOLUTION #78-2021: Councilmember Russell Blanchard made a motion to donate the Judge’s Bench to Town of Smithfield

Councilmember Melissa During seconded the motion.

Carried unanimously.

RESOLUTION #79-2021: Councilmember Melissa During made a motion to deem the desk surplus and accept a sealed bid for it.

Councilmember Doug Holdridge seconded the motion.

Carried unanimously.

New Business:

Supervisor Nirelli spoke about the elimination of the 2nd Justice's position. BOE told us that there is a vacancy on the Ballot for this year and there is someone that has passed petitions around for the position.

The Town can adopt a local law to eliminate the Justice position before the Judge take office. Bill Graham is interested in the position and keeping the position open. He would like to present his statements.

RESOLUTION #80-2021: Councilmember Doug Holdridge made a motion to open the Public Hearing for the Justice Position elimination at 8:27pm

Councilmember Russell Blanchard seconded the motion.

Carried unanimously.

Discussion with Mr. Graham was had. He spoke about wanting to run for the open Justice position. He has appx. 40 people that has signed his petition. He would like to put his expertise to work filling the open spot.

RESOLUTION #81-2021: Councilmember Russell Blanchard made a motion to close the Public Hearing for the Justice Position elimination at 8:35pm

Councilmember Doug Holdridge seconded the motion.

Carried unanimously.

Councilmember Russell Blanchard would like eliminate the position. Councilmember Jayne Black would like to keep the position. Councilmember Doug Holdridge has no problem to keep the Judge's petition in case of an illness. Councilmember Melissa During is not against having two Judges. She would like to clarify with him that he would not just be a fill in. Supervisor Nirelli proposes that we discuss with Judge Miller and Mr. Graham and table the discussion until next month.

We got the AUD back and will be posted and emailed to the Board.

Highway Superintendent discussed the quotes he got for the mower, a 96" for \$10,576.05 and 102" mower for \$12,521.00

RESOLUTION #82-2021: Councilmember Russell Blanchard made a motion to purchase the Diamond 3pt hitch mower for 102” for \$12,521.00
Councilmember Doug Holdridge seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

RESOLUTION #83-2021: Councilmember Russell Blanchard made a motion to move 5110.4 and 5142.4 \$44,560 back into 5110.4
Councilmember Melissa During seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

RESOLUTION #84-2021: Councilmember Russell Blanchard made a motion to approve the EV Charging Station.
Councilmember Melissa During seconded the motion.

RECORD OF VOTE

MEMBER NAME	AYE	NAY	ABSTAIN	ABSENT
Supervisor Yvonne Nirelli	X			
Councilmember Doug Holdridge	X			
Councilmember Jayne Black	X			
Councilmember Russ Blanchard	X			
Councilmember Melissa During	X			

Carried unanimously.

Supervisor Nirelli spoke about the reopening for Madison County regulations.

RESOLUTION #85-2021: Councilmember Russell Blanchard made a motion to Pay Claims

Councilmember Jayne Black seconded the motion.

Carried unanimously.

Public Discussion: Shaun LaVancher asked about the water project and the American Rescue Plan. Supervisor Nirelli stated that the district has already been formed so we won't be able to utilize the ARP for this district but she is talking with Shumar's office looking for other monies.

RESOLUTION #86-2021: Councilmember Russell Blanchard made a motion to end the meeting

Councilmember Jayne Black seconded the motion.

Carried unanimously.

Meeting was adjourned at 9:39 pm. Next meeting June 9, 2021