

Public Hearing  
July 24, 2012  
7:00 p.m.

Present: Supervisor Gerald L. Deming, Council Members: Lynn Parnell, David Deuel, Frank Rose Jr. and Norman Gates

Absent: None

Others: Andrew Emborsky and James Campbell (Town of York's Legal Counsel) and attached list of guests

Supervisor Deming introduced the Board, Town Clerk and Legal Counsel to the public.

Town Clerk, Christine Harris read aloud the Town of York's legal notice for proposed Local Law #1 for the year 2012, to institute a Moratorium and Prohibition within the Town of York, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

**7:02 p.m.**

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to open the Public Hearing. Voted on and approved, Yes-5, No-0.

Supervisor Deming stated the hearing was called to hear concerns pertaining to the draft moratorium prepared and gave a brief overview of the required guidelines for the hearing. Anyone wishing to speak, must state their name, address and direct all comments to the Town Board. A time limit of three minutes will be allotted for each comment. If remarks are requested as official correspondence of the meeting, a copy must be provided to the Town Clerk, otherwise the minutes will reflect a brief summary of the remarks, not a verbatim account. Mr. Deming stated Town Attorney, Mr. Campbell will now discuss the decision by the Town Board to prepare the proposed moratorium.

Mr. Campbell stated the Board requested of him over a month ago to prepare wording for a proposed moratorium in the Town of York. The Board has reviewed the draft and now felt that it was time to present to the public. Mr. Campbell briefly reviewed what a moratorium actually is. A moratorium is a temporary suspension of action, which is very important, in order to allow an owner or government time to obtain the necessary knowledge to do diligence in making a proper decision on a matter. A moratorium is in essence "a pause button", which would then trigger the Town Board to follow through with

additional work, justifying the purpose of such moratorium. One year may not be enough time, but is a reasonable amount to begin the necessary steps. The moratorium could be extended, but the Board must show that they are working steadily to update the process, otherwise additional time won't be granted. Mr. Campbell stated Moratorium is defensible in New York. This proposed moratorium could potentially be the tool used in outlining what the community wants for the Town of York in the future. Tonight's hearing is strictly to obtain feedback from the community. Mr. Campbell stated in his opinion this draft was prepared not to impact any existing operations or customers and feels it does not. In the event wording may be an issue, we can always change or alter this draft at any time, that's what the hearing process is for. Mr. Campbell commented, this is a very complicated topic, with many opinions and asked the public to consider written comments as well as verbal this evening.

#### COMMENTS/QUESTIONS

1) **Francis Pascuzzo** (3665 Pascuzzo Lane): I have been a resident of the Town of York for 77 years and feel the Town Board is taking the proper action by proposing this moratorium.

2) **Robert Wilcox** (1940 Craig Road): I believe a moratorium is not necessary, and personally feel the Town Board should not be involved in deciding what I can or can not do with my property.

3) **Jerry Sturm** (2496 Ellicott Road): (a) If this moratorium is approved, will this shut down existing wells/leases?

\*Attorney Campbell replied the draft was prepared with language crafted not to hinder existing wells.

(b) I attended the Caledonia Public Hearing and Mr. Holko stated the wording in the draft is what he had an issue with, and if we have the same wording, he will have an issue here as well.

4) **Frank LaPoma** (2063 Casey Road): (a) Why did Lenape shut down gas service in Avon?

\*Attorney Campbell replied he could not speak for Mr. Holko on his decision to cease service.

(b) I don't believe this moratorium is fair and I have had a well since 1973 and don't want to lose it.

5) **Jack Crooks** (Lenape): Mr. Holko was unable to attend this evening, but wanted me to submit a letter and documentation on his behalf.

(submitted to the Town Board)

6) **Fred Mingrino** (3112 Federal Road): My wife and I moved to York in 1986 and have raised two children here. Two weeks ago we received information from our Insurance Co. (Nationwide) stating their research on dangers in hydraulic fracturing. “Risks involved with hydraulic fracturing are now prohibited for General Liability, Commercial Auto, Public Auto, Motor Truck Cargo and Automobile Physical Damage Coverage”. It also states that risks also apply to landowners who lease lands for fracking operations. When a company like Nationwide determines the risks and dangers in fracking, our elected officials and citizens should as well. I feel a one year moratorium is essential to our county’s safety and well being.

(full letter was submitted to the Town Clerk)

7) **Dwain Wilder** (Rochester ) & Member of Frack Free Genesee): In addition to the Insurance companies, Mortgage holders are also well aware of the dangers in hydraulic fracturing. Wells Fargo will not give a mortgage to anyone who has a gas well on their property. This is not new for the insurance industry, they have been practicing this for some time.

(documentation was submitted to the Town Clerk)

8) **Davies Nagel** (3558 Main Street): I am a member of the Town of York Planning Board, and I’m very happy to see the steps the Town is proposing. Fracking has been around for 50 plus years, but not the current Hydraulic Fracturing. The Town’s Comprehensive Plan (Adopted in 2006), is in need of revision, which should be done every 3-4 years, so we are due for updates. The Town’s updated Zoning Ordinance (dated 2008), in cooperation with the Comprehensive Plan are in place to protect the community. In the Zoning Ordinance, roughly 100 pages discuss Wind Energy Facilities, but have nothing on the books in relation to High Volume Hydraulic Fracturing. We are not ready at this point and feel it is critical that the Town Board approve the moratorium in order to continue to protect us.

9) **Henry Fuller** (3566 Fowlerville Road): In the beginning of this meeting, it was outlined by the Supervisor that each person had 3 minutes to speak... I think we need to keep to the script.

10) **Anna Ryan** (3503 Batzing Road): Please approve the moratorium, I feel that will be the only way to keep control over what we currently have.

11) **Reverend Neil Frood Jr.** (2663 Main Street): I would like to encourage the Town Board to approve the proposed moratorium. After speaking with a few of my fellow Ministers on the subject, one spoke about fracking issues and what

they had been experiencing and the devastation it brought to their community. Please approve the moratorium.

12) **William Doolittle** (2509 Linwood Road): I feel Lenape has done a good job and has been a good neighbor to this community, and feel a moratorium is unnecessary. If approved will the Planning Board be reimbursing the residents who will ultimately lose money?

13) **Jack Crooks** (Lenape): I have been an employee of Lenape for 31 years and we have had very good relationships with this community. I encourage people to visit New York State Department of Environmental Conservation's (DEC) website to educate yourself on the topic and judge for yourself the facts.

14) **Bill Parish** (Lenape): The wording in the proposed Local Law is the problem. We work and buy in this community and have been good neighbors for years. Regardless of the rumors, we can not drill in the Marcellus Shale. DEC has numerous regulations that must be followed and we adhere to them. In all of my years with Lenape, we have not had any problems in the communities, this moratorium is not necessary.

15) **Grayce McLaughlin** (3112 Federal Road): As my husband stated earlier we have lived in this area for 26 years. If the Town Board doesn't approve this moratorium, we might not have the opportunity to keep what we currently have in this quiet community. It is an evasive industry with pollution, additional trucks, chemicals and noise to contend with, what would we be left with. We need to be respectful of the land.

16) **David Chugg**(1650 McKenzie Road): I am not in favor of the Town Board approving the moratorium. As I read it Lenape or any company would not be able to do any drilling if this is passed. Furthermore I have a hard time digesting the fact that someone has the right to tell me what I can and cannot do with my land. Town government should not have the authority to approve such moratorium.

17) **Rene Lyness** (2374 York Road West): We have experienced already losing a well and now have to pay to correct the matter. We certainly would not want to pay a second time if drilling should hinder it. We are very much in favor of the moratorium.

18) **Melissa Alber-Chase** (2345 Linwood Road): We have a well plus 30 acres we own and we do not want to have anything happen to our existing water source. We encourage the Town Board to pass the moratorium.

19) **Bob Nilsson** (Hemlock): As a truck driver I am quite familiar with the transportation issue many are speaking about. What is being proposed for a normal 3-5 acre site (required for a drilling pad) would roughly have 52,000 truck tips to it over the course of the year. Farm industry at the busy time of

chopping season is only seasonal, this proposed project will be non stop for years, not to mention that DEC will not be able to regulate everything. The Town Board should approve this moratorium.

20) **Lawrence Smith** (2413 Craig Road): I was hoping that this moratorium would help tensions regarding this very important issue, giving us the opportunity to iron out the facts and make a proper decision for the Town of York. I have many friends in the room this evening and we differ on what we believe the Town Board should do. I do not believe we should be able to do whatever we want with our land. Many years ago we had a bad experience leasing our home farm to a gas company. They broke promises they made and when they came back to renew the lease, we did not make the same mistake. I have many concerns regarding fracking in our community: earthquakes, trucking, water supplies, methane escape, carbon dioxide emissions and industrial accidents. More disclosures are needed. Unlike others, I feel the elected officials do have the right to decide for our community and I hope they approve a moratorium in order to grant us the time needed to better educate ourselves on this subject for the York community.

21) **Stanley Rodger** (LeRoy): I own property in Caledonia and York and I do not see a reason for a moratorium. Pennsylvania has been going full force and they don't seem to worry about the fracking industry. I do not understand what everyone is so worried about, they are making a great deal of money and we could be too. Lenape has a very good name in this community and we have been able to trust them for years.

22) **Dev Nagel** (3558 Main Street): I have listened to the comments this evening, but I think it is important to remember one thing, if approved, the moratorium is not a permanent stoppage, just a pause for a year. Time to obtain the information we need.

23) **Henry Fuller** (3566 Fowlerville Road): I am neither one way or the other on the topic, but do feel the need to educate ourselves on the subject. Some of the audience seem to be all about the money.

24) **Joe Montesano** (Avon): Albany says if a Town doesn't want fracking, they don't have to permit it.

25) **David Chugg** (1650 McKenzie Road): That previous comment is inaccurate...you can not ban fracking.

26) **Kirk Richenberg** (2337 Federal Road): Has the Town Board been approached by Lenape?

\*Supervisor Deming replied the Board has not been approached by Lenape, but did receive documentation this evening from them.

27) **Myron Rodger** (Perry): Did the Board invite Mr. Holko to the meeting this evening and if not, why not contact him.

\* Supervisor Deming replied Mr. Holko was aware of the meeting this evening and submitted his thoughts in writing.

28) **Bob Thompson** (Livonia): If fracking is approved by the DEC and a moratorium not passed, rural Livingston County will become a huge industry which will be something completely different from what we have known.

29) **Robert DeAnthony** (3054 Main Street): If we think this issue is going away, it's not. There are too many unanswered questions associated with the fracking industry.

30) **Stanley Rodger** (LeRoy): I believe the Town Board is worrying needlessly.

31) **Jerry Sturm** (2496 Ellicott Road): We all need to bear in mind that we have to follow the rules, and Lenape has done that for years and has been a good neighbor. We certainly do not want to pass anything that would affect their business practices.

32) **Diana DeAnthony** (3054 Main Street): We have access to so much information, we need to educate ourselves and think about the effects to our community before making a decision. We need to seriously consider the moratorium.

33) Lee Gratwick read aloud a letter on behalf of **Dr. Arnold Matlin M.D.** (2290 Anderson Road): Dr. Matlin has been a Pediatrician in Livingston County for over 40 years, and a Medical Consultant for the County Health Department. Dr. Matlin states as a member of the Medical Society of the State of New York (MSSNY), they have recently developed a position paper about fracking. The position paper states that the chemicals known to be used in fracking are extremely dangerous; other chemicals used are still unknown and their potential dangers as well. There is insufficient scientific data available to declare that fracking is safe. Therefore, MSSNY has called for a moratorium on fracking until more information has been presented to demonstrate clearly that it will not cause harm to the ecosystem and the people who depend on it. He asks that a local and state moratorium be passed until more is known on the fracking industry and potential dangers.

34) **Gary Boyd** (3675 Retsof Road): Earthquakes have occurred due to this industry.

35) **Ann Cady Jenson** (Avon): Due to the volumes of information on this subject it is clear that the Town Board has much to consider. Many opinions have

been expressed tonight. If the Town Board does approve a moratorium, there will be more work ahead. You would have a year to study and evaluate the information to make a proper decision for your community, and I know many educated people from York who would volunteer to assist in this process.

36) **Phillip Mulligan** (Chelsea, VT.): Currently I reside in Vermont but have interest in the gas issue as a 4<sup>th</sup> generation landowner with the Gratwick family. Do not take for granted the beauty and productivity of the land. Some communities have a tendency to overlook it until it is gone, you do not want to be that community. You are being asked to hold off on allowing an industry to experiment with your land and water. This new technology has created many controversial opinions, until more facts are known it is important to adopt this moratorium.

37) **Thomas Gates Sr.** (2962 Federal Road): I have lived in this town for 70 years, and I do not feel this moratorium is necessary. Lenape has been good to this area and I don't see that changing. I don't think the Town Board should move forward.

38) **Laurie Schneider** (2656 York Road West): I am anti-moratorium but pro permanent ban.

After no further comments from the public...

Supervisor Deming stated the hearing will remain open for submittal of written comments until August 14<sup>th</sup>, 2012 at 4:00 p.m. at which time the Board will reconvene.

Adjourned meeting at 8:25 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk

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July 24, 2012  
Public Hearing  
7:00 P.M.

GUESTS (Please Print)

- 1) David Chugg David Chugg
- 2) Anna Ryan
- 3) Cecilia Denel
- 4) HENRY FULLER
- 5) Becky McKeown (Genesee Sun)
- 6) DAVE MASEL
- 7) Fred Mingrino
- 8) JACK ELLIS
- 9) Bill Doolittle
- 10) ~~Cindy Salgado~~
- 11) ~~Frederic W Andrews~~
- 12) JOSEPH MONTESANO
- 13) GERRY SAHRLÉ
- 14) Jeanne Galbraith
- 15) Lee Gratwick
- 16) FRANCIS PASCUZZO SR.
- 17) Ann Lady Jensen
- 18) Clara Mulligan
- 19) Jim & Rene Lyless
- 20) Neil S. Frood JR.
- 21) Grayce McLaughlin
- 22) Jack Crooks



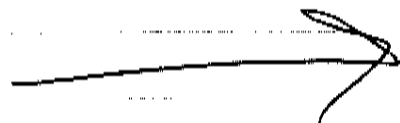


- 21) Jeanne Williams
- 22) Michael Williams
- 23) Frank Lafoma
- 24) Martha Edmonds
- 25) Ned Edmonds
- 26) Diana DeAnthony / Robert DeAnthony
- 27) Gary Boyd
- 28) ~~Neil~~
- 29) ~~Patty Dorey-Wahl~~
- 30) ~~R. Thompson~~
- 31) Bob Nilsson
- 32) Duain Wilder
- 33) Phillip Mulligan
- 34) Rob Wilcox
- 35) Stanley Rodger
- 36) Heather Nagel
- 37) Felina Nagel
- 38) Dev Nagel
- 39) Myron Rogee
- 40) Dan Gardner
- 41) Kohuta Macheer
- 42) Karen Canning Karen Canning
- 43) Bill Snyth
- 44) Mark Nagel Burroughs
- 45) Pat Gardner



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Tom Gades Sr.  
 Laurie Kohnen  
 Paul Schmechel  
 Carl Peter  
 John Greer



**TOWN OF YORK LOCAL LAW NO. 1 OF 2012**

A local law to institute a Moratorium and Prohibition within the Town of York, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

**BE IT ENACTED** by the Town Board of the Town of York, Livingston County, New York, as follows:

**Section 1. Title**

This Local Law shall be known as the "Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."

**Section 2. Authority and Intent; Findings; Purpose**

- A. **Authority and Intent** – This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of York under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

- B. **Findings of Fact** - The Town makes the following Findings of Fact relating to this Local Law:

1. York is a community in the western part of Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources.
  2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
  3. Preservation of the Town's irreplaceable high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the people who visit here.
  4. The Town wishes to secure more education and information about the activities temporarily prohibited by Section 4. of this Local Law, so as to permit the Town to properly determine what impacts such activity may have upon the community and whether the Town should contemplate amendments and/or additions to the York Town Code relative to such impacts.
- C. Purpose - The purpose of the Local Law is to enable the Town of York to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special use permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals relating to the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to appropriately address the same within the proper confines of New York State law. The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of York and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

### **Section 3. Definitions**

For purposes of this Local Law, the following terms shall have the meanings respectively

set forth below:

**Agriculture Use** - Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section 301 of the New York State Agriculture and Markets Law).

**Below-Regulatory Concern** - Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

**Gathering Line, Or Production Line** - Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

**High Volume Hydraulic Fracturing** - The stimulation of a vertical or horizontal well using 300,000 gallons or more of water as the primary carrier fluid in the Hydraulic Fracturing Fluid used in the process of Hydraulic Fracturing.

**Horizontal Drilling** - The process of drilling a well from the surface to a subsurface location just above the target gas or oil reservoir, then deviating the well bore from the vertical plane around a curve to intersect the reservoir at the an entry point with a near-horizontal inclination, and remaining within the reservoir until the desired bottom hole location is reached.

**Hydraulic Fracturing** - The process of pumping Hydraulic Fracturing Fluid down a wellbore (either vertical or horizontal) under high pressure, causing fractures in the gas bearing rock formation. Components of the Hydraulic Fracturing Fluid prop or hold open the fractures newly created, allowing the gas or oil to be extracted

**Hydraulic Fracturing Fluid** - The fluid used to perform hydraulic fracturing and includes the primary carrier fluid and any applicable additives.

**Injection Well** - A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include: (a) single family septic systems that receive solely residential waste; (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground; (c) geothermal wells associated with the recovery of

geothermal energy for heating or production of electric power; or (d) bore holes drilled to produce water to be used as such.

**Land Application Facility** – A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

**Natural Gas** – Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

**Natural Gas and/or Petroleum Exploration Activities** – Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface (including but not limited to the use of High Volume Hydraulic Fracturing and/or Horizontal Drilling) in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

**Natural Gas and/or Petroleum Extraction Activities** – The digging or drilling of a well (including but not limited to the use of High Volume Hydraulic Fracturing and/or Horizontal Drilling) for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons.

**Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes** – Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of “industrial waste,” “hazardous,” or “toxic,” and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids, including, but not limited to Hydraulic Fracturing Fluid; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, fracturing fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, Hydraulic Fracturing (including but not limited to High Volume Hydraulic Fracturing), transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from Hydraulic Fracturing, High Volume Hydraulic Fracturing and/or Horizontal Drilling for natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, productions or treatment of natural gas or petroleum. This

definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

**Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility** – Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

**Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump** – Land upon which Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

**Natural Gas and/or Petroleum Support Activities** – Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

**Natural Gas Compression Facility** – Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

**Natural Gas Processing Facility** – Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams.

**Non-Regulated Pipelines** – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

**Person** – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

**Pipeline** – All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

**Radioactive Material** – Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, *whether or not* it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

**Radiation** The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

**Subsurface** – Below the surface of the earth, or of a body of water, as the context may require.

**Town** – The Town of York, Livingston County, New York.

**Transmission Line** – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

**Underground Injection** – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

**Underground Natural Gas and Storage** – Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

#### **Section 4. Moratorium and Prohibition.**

- A. Unless permitted pursuant to Section 6 or Section 8 hereafter, from and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval of any nature shall be accepted,



processed, entertained, approved, approved conditionally, or issued by any board, employee, official or agent of the Town of York, for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town of York, for any of the following activities: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

- B. 1. Unless permitted pursuant to Section 6 or Section 8 hereafter, from and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town of York for any of the following activities: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.
2. The prohibitions set forth above in Clause 1. of this Section 4.B. are not intended, and shall not be construed, to: (a) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (b) prevent or prohibit the incidental or normal sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town, *so long as* such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.
- C. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.
- D. This moratorium and prohibition shall apply to all real property within the Town of York.
- E. Under no circumstances shall the failure of the Town Board of the Town of York, the Zoning Board of Appeals of the Town of York, the Planning Board of the Town of York, or the Code Enforcement Officer for the Town of York to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

**Section 5. Penalties.**

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.
- B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

**Section 6. 'Grandfathering' of Legal, Pre-existing Non-Conforming Use**

- A. 1. The prohibitions set forth above in Clause 1. of Section 4.B. above are not intended, and shall not be construed to prevent or prohibit: (a) production or extraction of natural gas and/or petroleum from any existing vertical well in production and existing within the Town of York prior to the adoption of this Local Law, so long as such activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies; and (b) exploration activities for natural gas and/or petroleum necessary to continue the production from such wells as described immediately above, so long as such exploration activities do not utilize High Volume Hydraulic Fracturing and/or Horizontal Drilling and those activities are in all respects being conducted in accordance with all

applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies. All such natural gas or petroleum extraction and exploration activities as identified immediately above shall be considered to be "grandfathered" as pre-existing, non-conforming uses and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural gas and/or petroleum extraction that is being conducted from vertical wells within the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A.1. of this Section 6, shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.
- B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A.1. of this Section 6, or upon any other substantive cessation of natural gas and/or petroleum extraction activities (otherwise grandfathered by virtue of Clause A.1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status and grandfathering of such activity shall terminate, and thereafter such natural gas and/or petroleum extraction activities shall in all respects be prohibited as contemplated by Section 4 hereof.
- C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A.1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any natural gas and/or petroleum extraction activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion, other than what is contemplated in Clause A.1. of this Section 6, shall not be grandfathered and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

#### **Section 7. Invalidation of any Conflicting Approvals or Permits.**

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of York when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

#### **Section 8. Hardship Use Variance.**

The Zoning Board of Appeals of the Town of York is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of

this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by Persons aggrieved hereby.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

- A. **Unnecessary Hardship.** In order to prove such unnecessary hardship, the applicant is required to demonstrate to the Zoning Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the rural area, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.
- B. **Reasonable Rate of Return.** In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed "dollars and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).
- C. **Unique Hardship.** No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
- D. **Essential Character of the Neighborhood.** In making the determination of whether the proposed development project will alter the essential character of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property, if any, may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will engage in a type of development that

will result in degradation to the air quality, water quality, and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (a) pose a threat to the public safety, including public health, water quality or air quality, (b) cause an extraordinary public expense, or (c) create a nuisance.

- E. **Self-Created Hardship.** The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

#### **Section 9. Severability.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

#### **Section 10. Superseding Intent and Effect.**

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supercede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Code of the Town of York; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of York.

**Section 11. Effective Date.**

This Local Law shall take effect immediately upon filing with the New York Department of State.