

September 24, 2014  
PUBLIC HEARING  
6:00 P.M.

For: LOCAL LAW #1 of 2014

SIGN IN

(PLEASE PRINT)

Henry Fuller

James Powell

Mary Kummer

Jim Faizos

TOM BATES

Lee Gratawick

Jeanne Williams

Marta Nagel Burroughs

Anne Roth-Blizzard

Barbara Ayers

Jerry Ayers

Melissa Aber

Beth Rhodes

R. Thompson

CB Corsetto

Barbara Lubanski

DAVE Nagel

Fred Mingrino

Gracya McLaughlin

Kirk Rechenberg

Thomas Gates Jr

Maryann Roby

Mary Ann Thompson

Jolly Adams

Molly Cummings

David Rose

Jeanne Stone

Brian Kessing

September 24, 2014  
6:00 p.m.  
Public Hearing  
**Proposed: Local Law #1 of 2014**

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

Absent: None

Others: James Campbell (Town Attorney)

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates authorizing Supervisor Deming to open the Public Hearing at 6:02 p.m. Voted on and approved, Yes-5, No-0.

Town Clerk, Mrs. Harris read aloud the Public Hearing notice placed in the Town's Official publication for two weeks, and posted on the website as well.

Supervisor Deming turned the meeting over to Mr. Campbell to outline the purpose of said hearing. Mr. Campbell stated the purpose is to allow the public to make comment and ask questions on the proposed Local Law, and fully understands what a hot topic this issue is to discuss. Any person wishing to speak will be allowed 3 minutes, and asked that the comment or question be addressed to the Town Board, not the public itself. Mr. Campbell added tonight's purpose is to allow the public to express to the Board how they interpret the proposed law, and for the Board to gain valuable information in order to proceed further based on recommendation and/or information received tonight to render a decision at a later date.

Supervisor Deming stated in addition to tonight's meeting, the Board will continue to receive written comments on the subject until October 23<sup>rd</sup>, with email submissions also being accepted.

### **COMMENTS/QUESTIONS**

1) Melissa Alber:

I just found out about this meeting last night when I saw Dave Nagel's sign on Main Street informing us. If it wasn't for his sign we would not be aware of the meeting at all.

\*Response: Clerk Harris stated that the notice was placed in the Livingston County News for two consecutive weeks and posted on the Town's website.

2) Mary Kummer:

The website, specifically facebook, is a perfect vehicle to notify the community, but should have more detail as to what the meetings are for.

3) Grayce McLaghlin:

Ms. Kummer asked a question pertaining to postings on facebook, which makes me ask why hasn't the old postings been removed and newer, more important postings added.

It is troubling to be here this evening to discuss this matter when other issues such as climate change are taking place. The effects of climate change could have a significant impact on the health and economics all over the world, and to have the Town Board take action on something that hasn't been proven safe is unsettling. Mrs. McLaghlin added she didn't think

the Town wouldn't take action until the State had rendered a decision on hydraulic fracturing. Mrs. McLaghlin stated with the addition of solar panels at the school, York Central is sending a message that they are taking steps to fight the causes of climate change, switching to clean energy, they see the big picture, what does the Town Board see if this law is passed. The public needs to hold the Board to the task of protecting the welfare of this community. Mrs. McLaghlin asked who on the Town Board may financially profit from this Local Law being adopted...and commented they should recuse themselves from this decision.

4) Mary Kummer:

Why would the Board allow fracking in the Town if only a handful profit at the expense of others? I resent that the Town Board is proposing this Local Law, the document prepared is inviting trouble. Once the first application is made, it will completely change this community.

5) David Rose:

I agree with others this evening on the concern they have about this Local Law and the impact it would have on this community. Economically it benefits few, with others very much affected. Agriculture, wineries and tourism would certainly suffer with the additional truck traffic we cannot guarantee anything can be trucked safely, and have enough traffic currently. Ohio and Oklahoma have had a number of earthquakes, with many negative affects, including destroying property values. Very few will benefit.

6) Bob Thompson:

In the proposed Local Law, on page 13 G "Required Setbacks", the Town cannot regulate the industry once it is here, the setbacks are mute...regulations meaningless.

7) Grayce McLaghlin:

In the law on page 9 under section 516 "Performance Standards", the Code Enforcement Officer may utilize the Town Engineer or other third party professionals....Is he or they qualified to fully assess this process, and would he know how to respond to an accident if a spill occurs.

8) Anne Roth-Blizzard:

On page 1 of the law under "Purpose", Section B (4) discusses protecting property values. When the first hint of hydrofracking comes to the Town of York, residents will be ready to move. Many lending institutions will not grant mortgages to individuals where hydraulic fracturing is occurring. Nationwide will not provide insurance to homeowners.

9) Kirk Richenberg:

How was Clark Patterson Lee involved in the draft of this Local Law? In June of 2014 prior to the regular meeting, a work session took place with 3 Town Board members, Town Attorney and a representative from Clark Patterson in attendance, to discuss the Local Law. This meeting they fully reviewed the document and then adopted into the minutes later that night at the regular meeting. Was the Steering Committee involved in drafting this law in any form.

10) Judy Falzoi:

I live in Avon but felt the need to come tonight. I read the proposed Local Law on the internet and then went to your zoning codes to see how everything fit. "Prohibited" appears throughout, which at first glance looked as though the Town was trying to protect themselves. Under Special Permitting, I thought the Town Board was outlining a specific area, until further reading was done.

\*If you have children and they ask you a question and you don't want to give an answer....you put them off, they keep coming back until an answer is given...This industry is

like that, they are large and will come right in if you allow them to enter. This is a “maybe” law and will bite you if you adopt it. Whether it be this Board or the next, there will not be any guidance if they are permitted to enter and will leave you liable. You must take a stand, don’t wimp out, as elected officials do what is right, until the State regulations change. Don’t give them a chance to enter.

11) Mary Kummer:

How much time and money has been spent on revisions, why did you go this route, why not a moratorium or a ban? At first glance the Law looked good, until you get to the Special Permit, which is pretty much an invitation to the industry.

12) David Rose:

When first reading the law I thought this was leading to a Ban but further in, the wording of the law feels like you are “sneaking” something in.

13) Lee Gratwick:

When the Board has the answers to tonight’s questions, I hope we can come together once again to review and further discuss our concerns.

14) Melissa Alber:

How are we going to prohibit use once they are here, regulations mean absolutely nothing. Under this law they will not have to tell us what is inside the trucks. For years I have had water issues, in fact experiencing no water, the Town had a meeting for our area about the possibility of water, but haven’t heard anything recently. I won’t be able to sell our home without water. Having permission to frack in our community is even worse.

15) Kirk Richenberg:

On page 1 under “Purpose” (B) (5) it says: Lessen and avoid congestion on town roads.... is there a threshold to determine what is congestion.

16) Davies Nagel:

Mr. Nagel read aloud his comments and then submitted to Clerk Harris in written format:



Public Hearing re: proposed zoning to allow fracking in York 9/24/14

D. Nagel

**RECEIVED**  
BY *CnH* | 9/24/14 DATE

1. A municipality has the legal right to ban the fracking industry in their town but has no legal authority to regulate the operations and processes of the industry. That's the law as it is now written.

-If York allows the fracking industry to come to town, anything like the special permit scheme or the increased setbacks will be challenged by the industry and most likely thrown out. The town will be left with absolutely no protections beyond what the DEC may see fit to propose and even your Fracking Committee has admitted these are woefully inadequate.

-Accordingly, I would ask the town board to require that the town attorney provide the town with a formal, written legal opinion that implementation of the special use permit scheme contemplated by the draft zoning law does not and will not constitute an impermissible regulation of the industry. If the Town Attorney is unwilling or unable to provide such a formal, written legal opinion, I would think and hope that the Town Board would not proceed with this scheme.

2. The draft zoning law seems to allow certain types of wastes that have been generated within the Town, but prohibits the same wastes if generated in a different state or town. This would appear to be a fairly clear-cut violation of the Commerce Clause of the US Constitution.

3. State law requires that all zoning be “in accord” with the Town’s comp plan. Here is what our comp plan has been designed to do:

-1. Balance various forms of development that are desirable by the public while protecting the rural character of the Town.

-the Town board never made any official attempt to find out how the towns people feel about bringing fracking to York, and I would say probably a majority of them oppose it.

-protecting the rural character? Most of the board has seen a well pad in action with the resulting noise, lights and trucks... obviously that does not fit in with the rural character of the town.

-2. Protect and encourage farming and agriculture. Studies in Pa have shown the milk production decreases when fracking comes to a town. The five-acre pads and supporting structures, etc. remove land from ag production.

-3. Encourage new development to protect and promote social values and economic well being. Studies have shown that this industry brings in more crime, more drugs, more strain on our police and first responders. Economically it has been shown that well less than 10% receive that economic benefit while the rest of us shoulder the costs.

-4. Protect property values. Research has shown that your house will be decrease in value if it’s anywhere near a fracking facility.

-5. Lessen and avoid congestion on town roads. How would bringing in an additional 700 trucks a day do that?



-6. Provide adequate light and air. Plenty of light... all day and all night, every single day and night. You can imagine how the air might be affected.

-7. Minimize conflicts among various land uses now and in the future. How do you minimize the conflicts between a well pad and a school, or a church or a farm... or minimize conflicts between a school bus and 700 trucks a day?

It seems that the proposed zoning has violated all seven of the comp plan goals and therefore violates the state law requiring the zoning to be based on the comp plan.

It is highly likely that the Town board will face a lawsuit over this and it is highly likely the Town Board will lose. If the Town wants fracking then rewrite the comp plan to allow it but it would be foolish to break state law.

Finally, the Fracking Committee finished its work and came up with its recommendations last year. Since then there have been numerous new studies and findings regarding fracking. Let me summarize one that came out this January:

“New Study Shows Proximity to Fracking Sites Increases Risk of Birth Defects” (I attached a copy of this)

Even New York State has not finished its health study or made a judgment on fracking and yet some people in the town believe they have all the answers and it's time to move forward with this. I am asking the board to postpone this proposed zoning until we have a much better understanding how fracking might impact this town. To do anything else could put the entire town at risk.

## New Study Shows Proximity to Fracking Sites Increases Risk of Birth Defects

Brandon Baker

(From D. Nagel)

January 30, 2014

**The dangers of fracking are no secret, but a study released this week shows the devastating impact the process can have on babies before they even have a chance to live their lives.**

The unborn children of pregnant women who live within a **10-mile radius of fracking sites** are far more susceptible to congenital heart defects (CHD), according to Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, the **latest study** from the National Institute of Environmental Health Sciences (NIH) and Environmental Health Perspectives' (EHP).

**The study examined data from 124,842 rural Colorado births from 1996 to 2009.**

"We observed an association between density and proximity of natural gas wells within a 10-mile radius of maternal residence and prevalence of CHDs and possibly neural tube defects," the study reads.

**Gary Wockner**, director of Clean Water Action's Colorado program, had a more direct interpretation of the study.

**"These findings suggest that fracking causes babies to be deformed—the more we learn about fracking, the worse it gets," he said. "If you live near a fracking site and you want to have a healthy baby, you should consider moving."**

According to the Colorado Oil and Gas Conservation Commission, 26 percent of the more than 47,000 oil and gas wells in the state are located within 150 to 1000 feet of a home or other type of building that is intended for human occupancy.

"What's most shocking is that this extremely dangerous industrial process of fracking has been allowed to occur with virtually no regulation and no study of the public health impacts," Wockner said. "This study is revealing the terrible **truth about fracking—it is a public health hazard, the breadth of which we are only beginning to know about.**"

The six researchers listed on the study say they restricted the analysis to rural towns of 50,000 or less in 57 counties—those with less potential for other pollution sources like traffic, congestion and industry. Essentially, more wells in a given area increase the risk of birth defects. The group would not conclude that "a positive association" exists between fracking sites and early chances of a child birth impacted fetal growth, though both were listed among outcomes that occurred.

"Studies in Colorado, Texas, Wyoming and Oklahoma have demonstrated that natural gas development (NGD) results in emission of volatile organic compounds, nitrogen dioxide, sulfur dioxide, particulate matter and polycyclic aromatic hydrocarbons from either the well itself or from associated drilling processes or related infrastructure, i.e., drilling muds, hydraulic fracturing fluids, tanks containing waste water and liquid hydrocarbons, diesel engines, compressor stations, dehydrators and pipelines," the study reads.

"Some of these pollutants [e.g., toluene, xylenes, and benzene] are suspected teratogens or mutagens and are known to cross the placenta, raising the possibility of fetal exposure to these and other pollutants resulting from NGD. Currently, there are few studies on the effects of air pollution or NGD on birth outcomes."

Other findings and birth defects include:

- Endocardial cushion defect
- Pulmonary valve atresia and stenosis
- "Births to mothers in the most exposed tertile (> 125 wells/mile) had a 30 percent greater prevalence of CHDs than those with no wells in a 10-mile radius."

Wockner said a citizens' revolt against fracking is ongoing near Denver, with cities of more than 400,000 people **voting to effectively ban** fracking. He believes these results will change that.

"The results of this study will continue to escalate that revolt, and rightly so," he said. **"Fracking is a dangerous industrial process that uses cancer-causing chemicals—it has absolutely no place near communities where families live, work and play."**

17) Grayce McLaghlin:

I would like to hear from the audience tonight anyone in favor of this law or fracking itself, in order to hear others' opinions.



18) Tom Gates Sr.:

The State pretty much owns everything. New York State is gearing up, and we will not have a thing to say in the matter.

19) Judy Falzoi:

At a cracker station located in Buffalo (where liquid natural gas is taken and separates out components), is a very large and noisy enterprise, communities would certainly not want this. If you have something firm on your books (in regulations) you have a bit more of a leg to stand on. Special Permitting in the proposed Local Law is the loophole they are looking for, if you approve this law you open the door to industry and affects not only your community but others as well.

20) Kirk Richenberg:

What was the total bill to Clark Patterson from start to finish?

21) David Rose:

I would like to hear from the Town Board their thoughts as to what they feel would be a positive associated with fracking.

22) Henry Fuller:

I was a member of the Steering Committee and the purpose was to come together to create a mission statement, for the betterment of this community. Many people misunderstand, the fact is we cannot regulate the gas industry, and spent numerous hours discussing that. We took a trip to Pennsylvania and toured different sites, with the guide not really showing the affected areas as we had hoped. As a committee tried to come up with what was best for the community. We had several people make up the Steering Committee including the Town Attorney, Supervisor Deming and Council Members Lynn Parnell and Frank Rose. You are giving up one industry for another with the Right to Farm status of this community. What difference does it make if the well is contaminated by farm waste or frack fluid?

I was also led to believe anytime you have three Board members it constitutes a meeting. **Attorney Campbell replied**, anytime you have the majority of the Board, it does indeed constitute a meeting. If Board members are present for gatherings of business purposes, you must allow the public to witness, they may not be allowed to participate, but can attend. Mr. Fuller: For a large number of meetings Mr. Deming was present, but when the document was completed, his name was crossed off, as if he was not a committee member.

\*Supervisor Deming stated: I was present for the first few meetings to help the committee get organized, but was never an official member, I only tried to help get things started.

23) David Rose:

We feel a bit helpless at times. Moratoriums and Bans have been challenged and have been upheld. There is a precedence we can follow in order to do the same.

24) Mary Kummer:

If the regulations are not enforceable, half of the document is not enforceable as well. I do not have a lot of faith in this, it will be too late to protect ourselves once they are in.

25) David Rose:

One Code Officer cannot protect us.

26) Melissa Alber:

There is too much back and forth with the regulations. Some regulations are positive while others are not.

27) David Rose:

Agriculture has been the heart and soul of this community, if fracking is allowed the gas industry will not be the same kind of neighbor.

28) Mary Kummer:

What does the map indicate?

Mr. Campbell's response: Red areas on the map depict "no-drill zones".

29) Tom Gates Sr.:

We already have many gas lines in this town, and feel we have a good relationship with the gas industry.

30) Anne Roth-Blizzard:

When I was on the Planning Board several years ago, as Chairperson I was asked by then Town Attorney, to have one of the members recuse themselves from a vote that may be a possible conflict of interest to him. At this time, we may have 2 or 3 members of the Town Board that could benefit because of fracking, they should recuse themselves as well for the same reason.

31) Tom Gates Sr.:

Maybe they have looked at this and feel it could be a benefit.

32) Tom Gates Jr.:

If we look at other areas, and take land not normally used for a specific purpose such as wind farm communities, how will this affect/benefit this community.

33) Melissa Alber:

Every meeting I have attended, the majority of the residents do not want this industry here. Only a small handful will benefit. This is not positive for our community.

34) Grayce McLaghlin:

When the Board discussed a moratorium two years ago, many residents came out in support of it, including several hundred signed names to a petition. When the vote came about the Town Board really didn't listen to the majority of the community....Please re-think this Local Law until real answers can be received.

35) Jeanne Williams:

Will email be a sufficient way to submit comments to the Town Board?

Attorney Campbell and Supervisor Deming each responded emails are certainly acceptable.

36) Bob Thompson:

When you hear at previous meetings and again this evening the dangers of fracking....this would be very irresponsible of the Board to adopt this law.

37) Marta Burroughs:

Can the Board indicate that you are even listening tonight.

38) Henry Fuller:

The Steering Committee started out with no direction. We thought we might get something from DEC, but received no help. What the public has reviewed is something really prepared by Norm Gardner of Clark Patterson Lee, after suggestions from the committee. Mr. Fuller stated: to “zone” people out or in is not right.

39) Kirk Richenberg:

I attended one (1) Steering Committee meeting, and Mr. Fuller told me Norm Gardner previously worked in the gas/fracking industry.

40) Melissa Alber:

I had a bit of concern on who was chosen to be on the Steering Committee. The selection went very quickly, and their direction went from nothing to regulations as quickly.

\*Supervisor Deming responded the Committee was comprised of:

- 2 – Town Board Members (1 in support and 1 against a moratorium)
- 2 – Farmers (1 in support and 1 against fracking)
- 2 – Members from the community
- Town Attorney
- Representative from Clark Patterson Lee
- Zoning Officer

41) Mary Kummer:

When my property becomes affected from others’ decisions, the quality of life will also be altered. This is not the right choice to make for this community, listen to your residents.

42) Henry Fuller:

I agree to a point on properties being affected, farmers do the same thing....do you like all of the manure trucks...

\*Ms. Kummer responded, no she did not.

Mr. Fuller: One member on the Steering Committee had just finished writing a moratorium for the Town of Perinton.

43) Judy Falzoi:

I was very neutral previously, but now have conducted much research on the dangers of fracking. Information is certainly out there about the gas and oil industry, you don’t have to go to one site or the other (for it or against it). The EPA puts out a great deal of information for you to read, research and render a decision. The newspapers are another source of information. The Town Board needs to make a decision.

44) Molly Cummings:

Our family moved to York a year and a half ago. We felt reasonably comfortable prior to our purchase that York would not be a community that would welcome this industry. I find it very disheartening if it does come here, because it is quite easy to find evidence to educate yourselves on the dangers. Basic health should be the reason to render a positive decision for this community.

\*Supervisor Deming stated the Public Hearing will remain open for written comments until October 23<sup>rd</sup>. Mr. Deming added the Board will try to get answers to these questions swiftly after the comment period has ended.

45) Melissa Alber:

I would like to request additional notification to the public going forward.

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Deuel to adjourn the Public Hearing until October 23<sup>rd</sup>. Voted on and approved, Yes-5, No-0.

Public Hearing closed at 7:20 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk