

December 2, 2014

Work Session

SIGN IN :

7:00 P.M.

- Chuck Morgan

Barbara J. Ayers

Gerald P. Ayers

Henry Fuller

James Lowell

Paul Peathey

Beth Rhodes

Melissa Alber

Patty Darcey-Walsh

Valerie Zambito

Jimmy Zambito

Anne Roth-Blessed

Roberta MacLean

Dave Nagel

Kirk Richerby

M N Burrocks

Pat Gowder

Jeanne Williams

Emma Williams

Lynn Copeland

Kathy Cunningham

Irene Lick

Molly Cummings

Larry Smith

David Rose

Grace McLaughlin

Mary Kummer

Holly Adams

~~Chick~~

Lee Petruschke

Cynthia Costio

Robert Nilsson

York Town Board
Work Session
Tuesday, December 2, 2014
7:00 P.M.

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

Absent: David Deuel

Others: James Campbell (Town Attorney) and attached list of guests

Supervisor Deming opened the Work Session at 7:02 p.m. and invited Councilwoman Parnell to lead in the Pledge of Allegiance.

Supervisor Deming read aloud the following statement:

As you are all aware, the Town Board originally scheduled this work session in order to discuss various comments and questions relating to the recent proposed local law to make changes to our Town Zoning with regard to various natural gas industry practices.

In reviewing the comments, both written and those made at the public hearing, it is obvious that the proposed local law is of great concern to many of the residents of our community. Many residents have indicated that they do not believe the proposed zoning changes to be in the best interest of our Town.

After consultation with the Attorney for the Town, I would like to recommend to the Town Board that the proposed local law to amend our Zoning be set aside due to the questions and concerns raised by many members of our community.

I would like to further recommend that the Town undertake a non-binding public poll to help the Town Board more fully understand the opinions and concerns of the majority of our citizens with regard to the issues relating to the natural gas industry in our community.

On behalf of the residents that I was elected to represent, I feel it is our duty to more fully explore the wishes and goals of our community. While not speaking for the Board as a whole, but only as one member, I believe that the Town Board should consider a moratorium to allow us time to determine the community's position and explore our options, all while being protected from possible changes that might occur at the State level.

At this time I would ask the other Town Board members to support setting the proposed local law aside and authorize moving forward with a public opinion poll and directing our Attorney to prepare an appropriate draft moratorium for consideration.

Mr. Deming asked the Board their thoughts on his statement and polled each one for a decision on whether or not to proceed. Council Members Parnell, Rose and Gates all agreed to proceed as outlined in Supervisor Deming's statement.

Supervisor Deming added with a public opinion poll or “straw vote”, it is a non-binding vote, but may have beneficial results for the Board, in order to render a future decision or action. Mr. Deming asked if others may have options to consider.

Grayce McLaghlin:

Ms. McLaghlin suggested further education for the community on the affects of hydrofracking prior to the opinion poll, in order to fully understand as much information as possible. Ms. McLaghlin also suggested perhaps a survey could be taken as well.

Melissa Alber:

Ms. Alber suggested to the Board as we proceed forward to have working meetings (sessions) as a cohesive group to discuss the material together making the process smoother.

Jerry Ayers:

Mr. Ayers stated timing of a vote is critical, why not prepare information with a ballot included, and mail to the residents directly. Mr. Ayers added voter turn-out for elections have declined and feels residents may be more apt to fill out and submit their ballot vote rather than having to appear at a scheduled date and time. With so many other responsibilities and activities, it may be easier for submittal of a ballot.

Attorney Campbell:

Mr. Campbell stated the average results of an opinion poll range from 25-30% voter turn out and is normally considered a good showing, but because of this situation, the Board would like to see a greater result in order to fully represent the wishes of the Town of York community. Mr. Campbell added whether it be an opinion poll or mailing a ballot to the resident(s), statistics have not been proven that one method is better than the other decisively.

David Rose:

Mr. Rose thanked the Town Board for listening to the concerns of the residents, and stressed that education is the key. This matter is not a small one, so whatever way we can gather information to educate ourselves and others, will be a positive step moving forward.

Jerry Ayers:

Mr. Ayers commented a moratorium would certainly buy the Town necessary time.

Mary Kummer:

Ms. Kummer suggested a newsletter to the residents outlining the subject and also scheduling future meeting dates, then perhaps another mailing with the ballot enclosed.

Attorney Campbell:

The Town of Avon has spent a great deal of time, in a non-partisan way, to digest the concerns of their community and surrounding communities, resources are available. There is credible information both ways on the internet, which unfortunately confuses people.

Roberta MacLean:

Ms. MacLean asked, in an opinion poll, would the voters be answering one specific question or series of questions? If several questions were posed, it could become confusing to some.

Attorney Campbell:

The value of the results will yield the information the Town Board needs in order to render a decision. There may be more than one question needed to gather the necessary information.

David Rose:

There are so many questions regarding this subject, perhaps a committee should be formed to gather needed information. Maybe the questions previously posed could be used to assist with the new proposed moratorium.

Attorney Campbell:

We will certainly not limit ourselves, as there is so much useful information available.

Davies Nagel:

If we look at how the Comprehensive Plan was completed, we invited the public to participate, as well as information submitted in the newsletter at that time. We should proceed with an impact study for our township pertaining to this industry, and use the Town of Avon as an example.

Grayce McLaghlin:

Ms. McLaghlin stated, the Town received a great deal of comments on the subject, and suggested they be used in the upcoming process.

Attorney Campbell's response:

Mr. Campbell agreed the Board did receive a large number of well written comments that could be quite useful.

Davies Nagel:

Mr. Nagel agreed the comments/information submitted could be of value to a potential committee.

Mary Kummer:

Ms. Kummer asked how long of a moratorium will we ask for?

Supervisor Deming responded we will be asking for a one (1) year moratorium. Attorney Campbell added anything longer than one year could be overly burdensome, but we could extend it if we had to.

Kirk Richenberg:

Mr. Richenberg stated with the last process, the Engineering firm was onboard early, costing the taxpayers a great deal of money. Mr. Richenberg suggested reviewing the information as a community before involving others.

Beth Rhodes:

Ms. Rhodes stated her concern about the timing of the moratorium. With the New Year approaching, things may happen quickly after January 1st. Can we proceed soon in order to file a moratorium prior to any potential changes by the State.

Supervisor Deming responded we do not anticipate changes by the State within the first or second week of January, and will be scheduling a Public Hearing as soon as possible to begin the steps for a moratorium.

Lee Gratwick:

Ms. Gratwick asked do we have a timeline for a moratorium?

Attorney Campbell replied the first step is to propose a draft of the Local Law to the Town Board and present it to them. After the Board has received such draft, ten (10) days thereafter a Public Hearing can be scheduled. Mr. Campbell commented he had an “idea” that the Town Board may wish to proceed with a moratorium, so in anticipation, he prepared a draft to present for review and given the concerns expressed this evening, the timing appears appropriate. In addition, Mr. Campbell also submitted a copy of the draft to the Livingston Co Planning Board to be placed on the agenda for review at their upcoming meeting on December 11, 2014. Both the County meeting and the regular Town Board meeting are slated for the same evening and it would be beneficial to schedule the Public Hearing at their December 11th meeting. This would allow for sufficient time for the County Planning to review and provide comment on the proposed Local Law prior to the hearing. Mr. Campbell also stated that because we submitted an original to the County Planning Board as recent as two (2) years ago, now with only minor changes, they may expedite the process.

Melissa Alber:

Ms. Alber inquired as to what kind of lead way are we looking at for posting?

Supervisor Deming and Mr. Campbell:

Both gentlemen conveyed that early January is the time table. The first or second week of January shouldn't pose too much of a risk but the window of opportunity may be pushed thereafter.

David Rose:

Mr. Rose asked if the Town Board would schedule a Special Meeting if the need arises?

Supervisor Deming:

Supervisor Deming replied the Town Board would certainly be willing to have a special meeting if necessary. Attorney Campbell added that although wanting to schedule as soon as possible, we still have time tables to contend with. Ultimately the Local Law will not be legally adopted until we receive confirmation from the Secretary of State that it was filed.

In addition, the Supervisor asked Attorney Campbell what the “gap time “ between Town Board approval in conjunction to filing with the State, and questioned if an application can be received within that period ?

Attorney Campbell stated that there will be a period of time after the approval to when filed with the State, but once they have received and documented the Local Law, no permits can be issued.

David Rose:

Mr. Rose asked, When the Board stated they have “set aside” the previous Local Law #1 of 2014, what exactly does that mean?

Mr. Campbell stated the Board could set aside or table the law, and the Board wanted people to know that by setting it aside would refer to the fact that it would be done at this point. Not knowing what action may come at the end of this upcoming process, it might be something different, but at this current time it was done.

Davies Nagel:

Mr. Nagel commented he feels what the Board is trying to achieve is a good plan and added that they will have help and support from this community. Mr. Nagel expressed that all opinions must be included in this upcoming process for it to be beneficial to the entire township.

Melissa Alber:

Ms. Alber commented that she appreciates the efforts of the Board and thanked them for listening.

Lee Gratwick:

Ms. Gratwick also thanked the Town Board for listening to the residents.

Henry Fuller:

Mr. Fuller stated that if only 25-30% of the registered voters care enough to come out to vote on General elections, he does not believe the numbers will be any better for the eventual straw poll vote.

Councilman Rose:

Mr. Rose stated that the Board discussed the fact that numbers have been low in recent elections but felt the need to include any and all resident's opinions in order to fully understand what our community wants.

Henry Fuller:

Mr. Fuller reported that he had recently read in a sports issued newspaper that the State of Virginia has now accepted fracking in their state.

Kirk Richenberg:

From a legal prospective, Mr. Richenberg asked with other moratoriums in place, are there any negative impacts?

Attorney Campbell replied that the Town of Avon was sued by Lenape Gas after their Local Law adoption. With every challenge, the courts upheld the municipality's right for such moratorium. The Towns of Dryden and Middlefield have paved the way for other townships as they were affirmed by the Court of Appeals allowing municipalities the right to ban hydraulic fracturing and gas drilling. Mr. Campbell added that we can not guarantee that the Town won't be challenged but in most recent cases the municipalities have won. Having a threat of a lawsuit should not alter the decision of the Board. Mr. Campbell stated once again that a moratorium is temporary suspension of land owner rights' and should be taken very seriously. A moratorium is for a specific purpose not a stalling tactic, and suggested the Town Board start the process immediately.

Kirk Richenberg:

Mr. Richenberg stated knowing that the meeting was originally slated to be a work session and to now change the format, perhaps many others may have wanted to attend if they had known of the change.

Henry Fuller:

Mr. Fuller commented if you own property then you also own the mineral rights, correct ?

Attorney Campbell replied that is not always the case.

Mr. Fuller then asked if the Town was going to give a reduction because of the mineral rights?

Supervisor Deming replied that you cannot use it now, why would a reduction be in order?

Mr. Campbell added that you have not lost your mineral rights and as a general principle, moratoriums are legal.

Grayce McLaghlin:

Ms. McLaghlin asked when the original Local Law was brought to the public, she did not believe any applications had been inquired about prior to that. Now with the newest proposed Local Law, have there been any attempt or inquiries of a drilling nature from a business?

Supervisor Deming answered by saying that no requests or inquiries have occurred. After the decision of the Board two (2) years ago to not institute a moratorium, the Steering Committee was formed to gather information in an effort to achieve a compromise.

Attorney Campbell stated that with this particular topic, it is very difficult to have a compromise. In addition, he shared that this moratorium will be for one (1) year but the Town Board could suspend it if necessary. The proposed moratorium also addresses sections pertaining to “Grandfathered activities”, hardship use variances and unique hardship (requesting relief) cases, which was built in to balance this law.

Lee Gratwick:

Ms. Gratwick agreed that with this issue, it is very difficult to find middle ground and hopefully more people will come forward to get involved in the upcoming process.

Supervisor Deming informed the public that the Town Board recently received written correspondence from Councilman David Deuel recusing himself from all future discussions and votes pertaining to fracking. Mr. Deming added that the letter is available for review.

David Rose:

Mr. Rose asked, with Mr. Deuel recusing himself, the Board now has four (4) members, what happens if there is a 2-2 vote on a matter?

Supervisor Deming replied if a vote occurs and the result is a 2-2 tie, the Board cannot legally take any action on the matter.

At this time, Attorney Campbell presented a draft copy of proposed Local Law #1-2014 to the York Town Board, to institute a Moratorium.

Davies Nagel:

Mr. Nagel stated he understands that the last two years have been difficult and appreciates the Town Board's efforts. Hopefully we can now work together for a resolve the community can be happy with.

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to adjourn the meeting at 7:45 p.m. Voted on and approved, Yes-4, No-0.

Respectfully Submitted,

Christine M. Harris, Clerk