

December 30, 2014
Public Hearing
6:00 P.M.

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

Absent: David Deuel

Others: Town Attorney James Campbell, Jack Ellis, Lisa Semmel, Chuck Morgan, Henry Fuller, Davies Nagel, Anne Roth-Blizzard, Donna and Lynn Katter, Becky Lewis, Lee Gratwick, Barbara and Jerry Ayers, Molly Cummings and David Rose, Thomas Donnan, Marta Nagel Burroughs, Rene Lyness, Patricia Gardner, Grayce McLaghlin and Fred Mingrino

Supervisor Deming opened the Public Hearing at 6:02 p.m. and turned the meeting over to Town Attorney Campbell, to present Local Law #1 of 2014, for the Town of York.

Mr. Campbell stated this Local Law shall be known as the “Moratorium on the Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal or Treatment of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.”

Mr. Campbell informed the public that the proposed Local Law is in essence the same format used by a number of municipalities in Livingston County, but did modify some language. Mr. Campbell stated he believes everyone here this evening was aware of the Governor’s decision to move forward with a BAN in New York State, but the Town still wanted to proceed with a moratorium because a BAN does not address all concerns, specifically storage of waste.

Mr. Campbell addressed what a moratorium actually is. A moratorium is a temporary suspension of land owner’s rights, for the purpose of exploration and education of information to enable the Town reasonable time to determine what the needs and goals are for the community. The moratorium is temporary in nature and is drafted for a one year period. Mr. Campbell stated less than one year may not be sufficient time to achieve what needs to be accomplished, and more than a year may be too long. Mr. Campbell did express the fact if additional time is necessary, a renewal of the moratorium can take place, but stressed the important thing to remember is the Town must do significant work in the 1 year’s time in order to advance the moratorium. Mr. Campbell stated, by way of discussing with the Board and public comment, updating of the existing zoning is a priority, but need to get a feel as to what the community wants in order to proceed in the right direction. At the end of the year, when the moratorium expires, if the Town wants to follow through with an extension, we will have to show that an extension is warranted and justified... which means a great deal of work has to be done within the years’ time. The Board also has the right to terminate the law as well if they desire, but due to the upcoming work involved, usually see the moratorium through for the full year.

Mr. Campbell stated a moratorium is done by way of a Local Law. A copy of the proposed law was submitted to Livingston County Planning for review and recommendation. The last meeting of the County Planning Board did not have enough representation so no action was taken either way on the subject. Mr. Campbell stated although not rendering a decision at their December 11th meeting, County Planning did give some advisory comments, similar with what other municipalities had received regarding a moratorium. Mr. Campbell commented Clerk Harris has fulfilled all legal obligations by publication of the Local Law in the official paper and notification to the surrounding townships, as well as neighboring counties. Notification was also posted on the Town’s website, www.yorkny.org and facebook page.

Supervisor Deming thanked Mr. Campbell for the overview and opened up the comment period.

1) Molly Cummings:

I have a question in regards to “Hardship Use Variance”, is this section in other drafts you have prepared?

Mr. Campbell: Yes, Hardship Use Variance is listed in other drafts and must be to be valid, in order to be able to have an Appeals process if necessary. This language is tried and true.

2) Donna Katter:

I know that many other towns have not approved moratoriums, how is this process going to proceed?

Mr. Campbell: Actually, many towns in Livingston County have adopted a moratorium. The Town of Avon is in the process of renewal for a third time, Livonia, Conesus and Caledonia adopted one for a year and Lima adopted a moratorium and then proceeded with a BAN, to name a few. As far as how to proceed at this point, the Town Board can make the determination on whether or not to adopt a moratorium, it is not subject to mandatory referendum. This Public Hearing is a part of the process, and the Board has a Special Town Board meeting at 7:00 tonight to render a decision.

3) Donna Katter:

I have read many comments on the website and not one was positive in favor of fracking in our community. Will those comments be taken into account toward a final decision?

Mr. Deming: The comments on the website and input at meetings are the reason we are here this evening, the Board listened to the concerns of the community, and chose to proceed with a moratorium.

4) Henry Fuller:

With the comments submitted, this was one of the problems with the process. Did the Board happen to count how many of the letters/emails submitted were residents of the Town of York?

Council Members Parnell and Gates: Yes, the Board did calculate the letters. Of the 90 submitted, 42 were from the residents within the Town of York.

Mr. Fuller: How long can the moratorium process go and how often can we renew?

Mr. Campbell: Moratoriums can be renewed, but depends on what issues are identified and/or what the Town may still need to accomplish. We may need to renew a few times depending on how detailed the zoning may need to be. There must be a “need” demonstrated, but we have to complete the work consistently along the way. All renewal of moratoriums need to show that work is getting done.

Mr. Fuller: We have already spent a great deal of time on not doing a moratorium, which was an expensive route. How much more do we need to spend in this direction, all we are doing is “adding to the pot”.

Mr. Campbell: A moratorium is a starting point NOT an ending point. This is just a pause until we have a more concrete idea as to what the community wants.

5) Donna Katter:

If after the year, who decides if fracking will be allowed in the Town?

Mr. Campbell: The Town Board, as the representatives of their community, have the decision to make on this subject, pending what is still in place by the State. The Board renders decisions on many subjects with exception to Mandatory and Permissive Referendum matters. Under Mandatory Referendum, a proposition goes up with a Yes or No vote, but very few items fall into this category. With Permissive Referendum, after an action takes place the public can petition if the numbers are significant, which could then force a vote. For this particular issue, the Town Board will render a decision on the matter.

6) Grayce McLaghlin:

Prior to the State's decision for a BAN, the Board scheduled this Public Hearing and Special Meeting, I hope you continue to proceed with the moratorium because all issues have not been addressed by the State.

Supervisor Deming: The State is not clear on what they are doing with a BAN and that is why we are here tonight to take it a step further to ensure another level of protection.

Ms. McLaghlin: We need to shore up our zoning for protection purposes.

Mr. Campbell: As Supervisor Deming eluded to, the State's decision has not changed this Board's decision to proceed with a moratorium. We are not sure what the State will do going forward, this is another form of protection. Many people have said that HVHF (High Volume Hydraulic Fracturing) will not take place here, but waste storage is an issue that still needs to be reviewed.

7) David Rose:

I submitted my comments to the Board yesterday and fully support the need for passage of a one year moratorium in our township.

RECEIVED
BY *Cmt* | 12/29/14 DATE

Comments on Proposed Local Law #1 of 2014 to institute a Moratorium pertaining to hydraulic fracturing in the Town of York

Although high volume hydraulic fracturing (HVHF) has been banned by New York State, I am in favor of the passage of a one year Moratorium in the Town of York for the following reasons.

1. The State ban does not include underground storage of natural gas, and disposal or treatment of natural gas or petroleum extraction, exploration and production wastes, which the York moratorium does include. Pennsylvania ships its HVHF wastes to New York State for treatment and storage because it considers the waste too dangerous (largely because of radioactivity levels) to keep safely within its borders. New York State has been accepting this waste in the Southern Tier even though our state does not have equipment and/or facilities that differ significantly than those in Pennsylvania.

Studies are being completed that are determining the level of radiation that is leeching out of the Southern Tier facilities. A Moratorium in the Town of York would give us time to consider these results before either accepting or banning storage and treatment of HVHF waste.

2. The New York State ban is not permanent, and things can change quickly. For example, Gov. Cuomo has recently called for a casino in the Southern Tier, even though the bid for a casino there has been rejected. Gov. Cuomo has reversed his decision to stay out of the casino process, and now has become extremely involved. The passage of Local Law #1 would give us time to truly study the effects of HVHF on our community.

3. It has taken the York Town Board, as well as the York community, a great deal of effort to reach the point at which a vote by the Town Board on a Moratorium is about to happen. To not complete this process would appear to negate all of these efforts, and leave us all in a state of confusion about where York stands on the issues surrounding HVHF.

Respectfully submitted by:



David H. Rose
2635 York Road West
York, NY 14592

December 29, 2014

Mr. Rose added, Dave Nagel offered community support in the upcoming months, leading to a resolve as to what the Town of York may want, and agrees the Board should tap into that resource. So much work has been done in other communities pertaining to fracking without spending a great deal of money.

8) Lee Gratwick:

I agree with David Rose, the Board should consider using willing community members going forward. There seems to be a “ground swell of interest” to study information and involve the community on both sides of the issue. I would like to commend the Board on proceeding forward with a moratorium.

9) David Rose:

I would like to address a previous question asked (Donna Katter’s) about the Board having the power to render a decision on the subject of whether or not fracking could happen after the one year moratorium has ceased. I feel the Board will make a decision in the best interest of the Town based on the information obtained.

Donna Katter’s response: I wasn’t questioning the power of the Board, I just asked how the process was done.

10) Rene Lyness:

I fully support the Board’s decision to adopt a moratorium.

11) Lynn Katter:

Has the Board as a whole taken a trip to Pennsylvania to witness areas that have been affected by fracking?

Supervisor Deming: We had a tour almost two years ago. The guide that conducted the tour was certainly anti-fracking and showed us areas in her community that were affected. I was also a part of a trip taken by County representatives. This visit was hosted by the gas industry. Between both visits I was able to hear the issue from two perspectives.

Mr. Katter: In my line of work, I have spent a great deal of time with farmers in affected areas, all of which are very upset and concerned about what has taken place. The gas company has changed leases after they had been signed and was told there is nothing the owners could do. The farmers have expressed that their water is no longer good for consumption. Their water supply is in dire straights, think long and hard about this matter. Many farmers do not receive any money for a lease, and ultimately are going broke. Roadways are in terrible shape and they do not know when they will be repaired. If a moratorium can be in place, do so, look hard about regulations especially when water sources may be affected.

Mr. Campbell: The document prepared and proposed this evening is defensible and has withstood the Courts. It is very solid and if the Board adopts it this evening, they must follow through with additional work prior to its expiration.

12) Donna Katter:

If the Board does not adopt a moratorium, then what?

Mr. Campbell: As stated earlier, a moratorium is just a pause, but if no action is taken there are potential risks if the State removes the BAN and opens up the permitting process to the industry. Once permits are obtained, it is very difficult to stop...timing is the key. We are trying to get ahead of the matter rather than fighting from behind, otherwise we would be paralyzed on assisting the community. We do not want to be in crisis mode.

Mrs. Katter: If the State opens up fracking, can a Town refuse it?

Mr. Campbell: There have been several cases heard by the Court of Appeals, which have been upheld, on behalf of a Town's right not to allow fracking in their community. A moratorium or BAN can be obtained by a Town and the law has upheld their right to do so.

13) **Henry Fuller:**

How does the Agriculture Law fit in? , Does it prohibit Agriculture?

Mr. Campbell: I am not quite sure of the question, but if you are asking about the Department of Agriculture and Markets (State) and the Town and if there is a similar conflict between them, right now I would say there is not.

14) **Grayce McLaghlin:**

Can you give us an example of a Hardship Variance?

Mr. Campbell: No, I can't give an example of a Hardship Variance. The language in the document already mirrors case law, which is a fairly high burden to achieve.

15) **Henry Fuller:**

Does Agriculture and Markets have protection for farmers in regards to their Agriculture exemption(s)?

Mr. Campbell: I am not aware of any regulations with Agriculture and Markets at this time. One question that keeps being asked is, is harvesting a natural resource of gas an agricultural endeavor. Nothing has happened in New York State yet, but other areas in the Country feel opposite, to date we have not heard that argument here.

After no further questions or comments from the public....

ADJOURNMENT

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Rose to close the Public Hearing at 7:48 p.m. Voted on and approved, Yes-4, No-0.

Respectfully Submitted,

Christine M. Harris, Clerk

SPECIAL Town Board Meeting
December 30, 2014
7:00 P.M.

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

Absent: David Deuel

Others: Town Attorney, James Campbell, Jack Ellis, Lisa Semmel, Chuck Morgan, Henry Fuller, Davies Nagel, Anne Roth-Blizzard, Donna and Lynn Katter, Becky Lewis, Lee Gratwick, Barbara and Jerry Ayers, Molly Cummings and David Rose, Thomas Donnan, Marta Nagel Burroughs, Rene Lyness, Patricia Gardner, Grayce McLaglin and Fred Mingrino.

Supervisor Deming opened the Special Town Board Meeting at 7:00 p.m.

TYPE II ACTION

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Rose acknowledging adoption of Proposed Local Law #1 of 2014 would constitute a Type 2 action under the State Environmental Quality Review Act (SEQR) as moratoria are specifically listed actions under 6 New York Code Rules and Regulations § 617.5 and that once acknowledged, no further action under SEQR is required. Voted on and approved, Yes-4, No-0.

BOARD COMMENTS

Supervisor Deming asked each Board member their thoughts on the issue of adoption of the proposed moratorium.

Councilman Rose stated we definitely need further time to discuss the needs of the community until we are sure what direction to proceed in. Mr. Rose added not knowing what way the State will go, a committee should be formed here to assist in the solution.

Councilwoman Parnell commented she fully agrees with Mr. Rose that time is necessary in order to figure out what our Town needs, and a one year moratorium will be a good start.

Councilman Gates stated through the Steering Committee we proposed a document to allow fracking in the Town in certain areas, but could not come to a compromise. Even though I am pro-fracking, I believe a moratorium is the way to go until we decide where to go from here. Our farm has a gas well, but do not receive any money for it. I do have concerns for those who have a gas well, and what a moratorium may mean to them.

APPROVAL

RESOLUTION offered by Mr. Gates and seconded by Mrs. Parnell to approve Local Law #1 of 2014 instituting a one year Moratorium and Prohibition within the Town of York of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal or Treatment of Natural Gas or Petroleum Extraction, Exploration and Production Wastes. Voted on and approved, Yes-4, No-0.

Council Member Norman Gates	-	Aye
Council Member Frank Rose Jr.	-	Aye
Council Member Lynn Parnell	-	Aye
Supervisor Gerald Deming	-	Aye

*Attorney Campbell stated Clerk Harris will prepare the necessary Local Law documentation for filing with the Department of State.

ADJOURNMENT

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Rose to adjourn the Special Town Board Meeting. Voted on and approved, Yes-4, No-0.

Special Town Board Meeting closed at 7:03 p.m.

Respectfully Submitted,

Christine M. Harris, Clerk