

**Meeting, Citizens Working Committee on Hydrofracking (CWCH)
Monday, September 24, 2012, 6:00 PM, Rush Town Board Room**

Present: Carol Barnett, Ted Barnett, Beth Hoak, Jordan Kleiman, Bob Powers, Marianne Rizzo; Town Board Liaison Bill Riepe

Absent: Kathy Hankins, Ed Richard

The CWCH met on 9/24/12 from 6:00 PM till about 8:00 PM.

Jordan Kleiman gave some tips on conducting fact-finding research. He advised us to do sufficient preliminary research into state, municipal, and other documents and to carefully formulate questions before approaching town officials, so as to use their time most efficiently.

We discussed the purpose of the fact-finding phase, which is to gather information specific to our town which will enable town citizens and town officials to evaluate the potential impact of hydrofracking in Rush and help them to determine the best measures to be taken in response to it. While evidence and analysis of the general impacts of hydrofracking will have its place in our report, our first task is to investigate the concrete particulars of our town.

Jordan K said that a possible addition to our list of issues for fact-finding is town insurance against liability, and also perhaps individual homeowners' insurance. The committee concurred that we should explore the question of increased risk for the town, increased costs for insurance, and who assumes those costs. As for homeowners insurance, two national carriers (Nationwide and MetLife) have said that they will no longer write coverage for properties that have been leased to natural gas companies.

We discussed the draft fact-finding reports (which are works-in-progress) submitted thus far. More work needs to be done, and the final reports on individual areas of concern will have to be edited and combined in such a way as to be useful to the town and avoid redundancies.

Marianne Rizzo made the point that references in the Zoning Code to special permits are a cause for concern. Jordan K agreed, adding that the requirement of a special permit implies the right to apply for one, and therefore creates an opening for activities that are not otherwise allowed under our Zoning Ordinance. Thus, without specific changes in the zoning code addressing hydrofracking and its related activities, anyone denied a special permit to conduct such activities could initiate Article 78 proceedings, claiming that the denial was "arbitrary and capricious." Bill Riepe responded that no such problems arose in the Dryden and Middlefield cases, the only two legal challenges to home rule that have gone to trial. Jordan K reminded the committee that neither of the two court decisions involved the testing of town officials' discretionary power to deny special permits. In other words, Article 78 proceedings were not at issue. Instead, the two cases involved municipalities that had relied on full-fledged bans via changes in

their respective zoning codes, and in both cases the courts upheld the bans. Thus the presumptive power of NYS town officials to deny special permits has never been put to the legal test in the context of hydrofracking. Bill Riepe responded that the Planning Board has nevertheless stated that it feels it has the means to reject hydrofracking under the code as written.*

We discussed the NYMIR/Association of Towns report, "Protecting Our Local Roads." According to this report, it is estimated that each well drilled will result in 3,950 heavy truck round trips and 2,840 light truck round trips; and since each well pad can be drilled for multiple wells, to measure the impact of a hydrofracking site, those numbers have to be multiplied by the number of wells per pad. The committee agreed that a road use law will be a good idea for our town because, no matter what other protective measures we may take by changing our ordinances, activities in neighboring towns can place a burden on and pose a threat to our roads. The committee also noted that the NYMIR report will be a useful guide to drafting a road use law, but a great deal of work will be required to determine specific measures for our town, such as size and weight of trucks, frequency and timing of trips, truck routes, amounts of escrow accounts, maintenance bonds, and insurance policies to be required, and the procedure for permitting under the law, including responsibilities of town officials.

We discussed our planned field trip to Pennsylvania (scheduled for October 20) to view the impact of hydrofracking in communities where it has been going on for some time now. The trip itinerary has yet to be determined, though we have some useful leads and contacts. Ted Barnett volunteered to be trip photographer and videographer. Bill Riepe wondered if a weekend trip will allow us to assess the full impact of weekday activity and we agreed it may not, but for practical reasons our trip must be on a weekend. Ted and Carol Barnett may take a weekday trip before or after the Oct. 20 trip, and if so, will record what they see; they will also notify others beforehand to see if anyone wants to join them. All town officials will be invited to join the Oct. 20 trip. The six CWCH members who can go on the trip will gather at Barnetts' house at 5:45AM on Oct. 20, to leave at 6:00AM and return back to Rush by 5:00PM. If more people want to join us, we will arrange a convoy.

Jordan K reported that the Slottjes (of the Community Environmental Defense Council) have not yet completed their *pro bono* evaluation of our Zoning Ordinance, and that we await a response from them.

We scheduled our next meeting for Monday, October 22 at 6:00PM in the Rush Town Board Room.

Respectfully submitted,
Carol Barnett for CWCH

*The committee believes that if the Rush Town Board were convinced that such discretionary authority was sufficient to protect the town, its members would presumably not have enacted a moratorium to explore the need for further protection. Councilman

Riepe nevertheless expressed his intention to seek further clarification. At the Town Board meeting on 9/26/12, Councilman Riepe asked the town attorney whether the Rush town code as written can protect the town against hydrofracking activity. Attorney Pavia replied that the Planning Board thinks that existing provisions can prevent hydrofracking; but towns "typically consider adopting a specific ordinance," and this approach could be explored by the Town Board. Councilman Riepe also asked Highway Superintendent Mark David if our town roads could take the impact of hydrofracking. Mr. David replied that "They wouldn't hold up."