

**Meeting, Citizens Working Committee on Hydrofracking (CWCH)
Tuesday, November 13, 2012, 6:30 PM, Rush Town Board Room**

Present: Carol Barnett, Ted Barnett, Kathy Hankins, Beth Hoak, Jordan Kleiman, Marianne Rizzo

Absent: Bob Powers, Ed Richard; Town Board Liaison Bill Riepe

The Citizens Working Committee on Hydrofracking met on 11/13/12 from 6:30 PM till about 8:45 PM.

We discussed the status of our fact-finding thus far.

It was reported that the Town of Perinton had recently enacted legislation that prohibits the extraction, exploration and storage of petroleum and natural gas within their town.

A discussion was held on our committee's research to date, including a review of our current Town of Rush zoning ordinance; articles regarding using local zoning regulations to address hydrofracking; and reviews of other NYS zoning ordinances, especially noting the work of Tioga County and Tompkins County.

Preliminary research findings reported included:

1. The Town of Rush current zoning regulations permit gas drilling under a special use permit in all residential areas. Our current zoning regulations would allow gas drilling throughout the major land areas of our town. Gas drilling does not currently appear to be listed as either light or heavy industrial use.
2. Allowing gas drilling under a special use permit could open a town to hydrofracking in any area that would meet NYS DEC requirements. These regulations could effectively end up being the only provisions and limitations in place if our zoning is not revised.
3. A municipality does not have to allow the exploitation of any natural resources within its boundaries when prohibiting this activity is a reasonable exercise of the town's "police powers" to protect the rights, health and well-being of its citizens and preserve its character as described in the comprehensive plan.
4. Any attempts to restrict or control leases and mining in towns that do not prohibit gas drilling (or as in our case allows gas drilling under a special use permit) would open a town up to litigation, takings claims, and numerous Article 78 hearings. There would be a very strong probability that our town would lose in any court decisions because we allow gas drilling under a special use permit.
5. Some municipalities prohibit mining and exploration or exploitation of natural resources based on their comprehensive plan, tourism and preservation of their community character.
6. Because we already permit natural resource mining (e.g. quarries) we would need to specifically prohibit gas drilling through our zoning ordinance.
7. NYS Municipalities can use zoning regulations to prohibit gas drilling and other gas drilling related activities within their border.

8. Recently upheld court decisions allow local zoning codes to specifically prohibit gas drilling in one or all zoning areas to protect the natural resources, character, agriculture and comprehensive plan.
9. Towns in NYS counties receptive to hydrofracking (Tioga, Broome) and others who are concerned about the negative impact from neighboring counties (Tompkins County) are actively engaging at the county level in recommending extensive and detailed revisions and restructuring of town zoning codes to address and mitigate all of the expected negative impacts of hydrofracking to agriculture, residential neighborhoods, waterways and aquifers, environmentally sensitive areas, other commercial enterprises.
10. Zoning regulations being considered by municipalities considering permitting hydrofracking are numerous and include specific regulations regarding storage of gas within the town; disposal and storage of gas drilling waste water; extraction of water from town waterways; and well-water testing prior to drilling to assess liability if well water becomes undrinkable after drilling.
11. In many communities specific legislation is being considered to control odors, noise, lighting and traffic pollution; and to revise permit and site plan process requirements to specifically address the potential impacts of hydrofracking.
12. Municipal attempts to regulate the fracking process in piecemeal fashion are not likely to hold up in court given the NYS Environmental Conservation Law. The use of zoning laws to implement an outright, however, does not run afoul of NYS-ECL.

We reviewed road use guidelines and sample ordinances from other communities that have been sent to us by Michael Kenneally, attorney for the NY State Association of Towns, as well as ordinances from other communities. K. Hankins interviewed Highway Superintendent Mark David, who reaffirmed the position that he has previously stated to the Town Board that our town road system as it has evolved over the past 70 years is not designed to handle, and could not withstand, the traffic associated with hydrofracking. We have 27 miles of town roads that we need to protect. A road use or road preservation law would address these concerns, and is necessary regardless of whether we allow gas drilling in our community.

We viewed the video footage of the hydrofracking field trip taken and provisionally edited by Ted Barnett. Several members of the committee had comments about how to clarify or otherwise improve the presentation of the video. There were also suggestions and comments on the one-page sheet, "Impacts of Hydrofracking," which will be handed out at the Town Board to accompany the showing of the video.

Deadline for submission of fact-finding materials was not decided at this meeting. We did decide that we will continue to keep our goal to submit our report to the Town Board by mid-January in order provide the Town Board ample time to enact, before the end of the moratorium period, legislation and zoning revisions that will protect our town after the moratorium is over.

All fact-finding will need to be completed sufficiently before that target date to allow time for drafting, revision, analysis, and recirculation to the entire committee for comments and questions. It was decided that a revised timeline would be drafted and circulated.

We adjourned the meeting at approximately 8:45 PM.

Respectfully submitted,
Carol Barnett