6/17/13
TO: TOWNBD
FROM: Pame Vipolicci

TOWN OF LIMA

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Elvira Luhowy
Harold Harris
HIGHWAY SUPERINTENDENT:
Keith Arner
CODE ENFORCEMENT OFFICER
Paul R. Luft
ASSESSOR:
Robert Morgan

TO: **Livingston County Planning Department, Monroe County Planning Department**
Ontario County Planning Department
Towns of Mendon, West Bloomfield, Richmond, Livonia, Avon, Rush
Village of Honeoye Falls

FROM: **Jennifer Shanks, Lima Town Clerk**

DATE: **June 10, 2013**

RE: **Local Law No. 2 of 2013**

Enclosed is the proposed Town of Lima Local Law No. 2 of 2013 to effect a Moratorium and Prohibition within the Town of Lima, Livingston County, New York, of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes..

As per General Municipal Law 239 (m) and Town Law 264, this serves as the official notice of such.

Any comments may be directed to Town Clerk, Jennifer Shanks, by no later than July 11, 2013.

If we can be of assistance, please feel free to contact our office at (585)582-1130, Monday through Friday 8 a.m. to 4 p.m., except Wednesdays 8 a.m. to noon.

Very truly yours,

Jennifer Shanks

Jennifer Shanks
Lima Town Clerk

TOWN OF LIMA LOCAL LAW NO. 2 of 2013

A local law to effect a Moratorium and Prohibition within the Town of Lima, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

BE IT ENACTED by the Town Board of the Town of Lima, Livingston County, New York, as follows:

Section 1. Title

This Local Law shall be known as the "Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."

Section 2. Authority and Intent; Findings; Purpose

A. Authority and Intent – This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Lima under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive "incidental control" of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

B. Findings of Fact - The Town makes the following Findings of Fact relating to this Local Law:

1. Lima is a community in the northern part of Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources. Lima attracts a significant number of yearly visitors. Lima seeks to attract even more visitors, and that strategy has the potential to be a significant economic development driver, provided that Lima protects its scenic and other natural resources and does not instead devote it open space to industrial-scale gas extraction drilling and associated industrial activities.

2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.

3. Preservation of the Town's irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.

5. Allowing the activities prohibited by Section 4. of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.

6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby could be

hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 4. of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.

7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town, Noise, traffic congestion, nighttime lighting, and vibration can have negative effects on human health and wildlife.

10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

11. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

12. The explicit proscription of the activities prohibited by Section 4. of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of such laws:

As the United States Supreme Court stated in Town of Belle Terre v. Borass, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. 416 U.S. at 6.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning' and held as follows:

We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. **A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.** *87 N.Y. 2d at 683, 684. (emphasis added.)*

C. Purpose - The purpose of the Local Law is to enable the Town of Lima to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to address the same. The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Lima and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

Section 3. Definitions

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use - Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern – Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line - Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Injection Well – A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include: (a) single family septic systems that receive solely residential waste; (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground; (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power; or (d) bore holes drilled to produce water to be used as such.

Land Application Facility – A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas – Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas and/or Petroleum Exploration Activities – Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling

or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas and/or Petroleum Extraction Activities – The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes – Any of the following in any form, and *whether or not* such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, productions or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility – Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump – Land upon which Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas and/or Petroleum Support Activities – Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing

Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

Natural Gas Compression Facility – Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility – Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO_2 separated from natural gas streams.

Non-Regulated Pipelines – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

Pipeline – All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material – Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is "radioactive material" for purposes hereof, *whether or not* it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation – The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface – Below the surface of the earth, or of a body of water, as the context may require.

Town – The Town of Lima, Livingston County, New York.

Transmission Line – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

Underground Natural Gas and Storage – Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

Section 4. Moratorium and Prohibition.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance temporary certificate, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

B. 1. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities, excepting and excluding, however, any properly permitted gas and/or petroleum product transmission lines.

a. The prohibitions set forth above in Clause 1. of this Section 4.B. are not intended, and shall not be construed, to: (a) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (b) prevent or prohibit the incidental or normal sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town, *so long as* such uses do not involve any Natural Gas and/or

Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.

C. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

D. This moratorium and prohibition shall apply to all real property within the Town.

E. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. Penalties.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars ($2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 6. 'Grandfathering' of Legal, Pre-existing Non-Conforming Use

Notwithstanding any provision hereof the contrary, any Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A. 1. Where, as of the effective date of this Local Law, substantive Natural Gas and/or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A.1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A.1. of this Section 6, or upon any other substantive cessation of Natural Gas and/or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A.1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A.1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas and/or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A.1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. Invalidity of any Conflicting Approvals or Permits.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of Lima when or to the extent that such permit or

approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

Section 8. Hardship Use Variance.

The Zoning Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Zoning Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the rural, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed "dollars and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

C. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making the determination of whether the proposed development project will alter the essential character of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation:

(i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will engage in a type of development that will result in degradation to the air quality, water quality, and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (a) pose a threat to the public safety, including public health, water quality or air quality, (b) cause an extraordinary public expense, or (c) create a nuisance.

E. Self-Created Hardship. The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 9. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted

this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 10. Superseding Intent and Effect.

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supercede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Code of the Town of Lima; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Lima.

Section 11. Effective Date.

This Local Law shall take effect immediately upon filing with the New York Department of State.