

RUSH TOWN BOARD
Minutes of March 28, 2012
Regular Meeting

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:00 PM on March 28, 2012, at the Rush Town Pavilion, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT:	Richard Anderson	-----	Supervisor
	William Riepe	-----	Councilman, Deputy Town Supervisor
	Lisa Sluberski	-----	Councilwoman
	Kathryn Steiner	-----	Councilwoman
	Daniel Woolaver	-----	Councilman
	Pamela Bucci	-----	Town Clerk
	Charles Steinman, Esq.	-----	Special Counsel

OTHERS

PRESENT:	Peter Maurer	-----	Penfield Resident
	Mark David	-----	Highway Superintendent, Resident
	Ansgar Schmid	-----	Resident
	Christopher Giordano	-----	Resident
	Yong Bom Kim-Fredell	-----	Resident
	Cathy Hughes	-----	Resident
	Peter Kim-Fredell	-----	Resident
	Lisa Johnson	-----	Resident
	Joan Starkweather	-----	Resident
	Dave Sluberski	-----	Resident
	Jack Mould	-----	Resident
	Carol Barnett	-----	Resident
	Kathryn Hankins	-----	Resident
	Jordan Kleiman	-----	Resident
	Carolee Powers	-----	Resident
	Marianne Rizzo	-----	Resident
	Robert Powers	-----	Resident
	Robert & Pat Kraus	-----	Resident
	Julia Lederman	-----	Resident
	Joseph Lomedico	-----	Resident
	Mark Henry	-----	Resident
	Jean Stephens	-----	Resident
	Marcia Erwin	-----	Resident
	Harvey Seymour	-----	Resident
	Jeffrey Starkweather	-----	Resident
	Robin Rapport	-----	Resident

Tamar Massen ----- Geneseo Resident
Lauren Bomelse ----- Geneseo Resident

I. APPROVAL OF MINUTES

RESOLUTION #76-2012

Councilwoman Sluberski moved to approve the Minutes of March 14, 2012, as submitted by the Town Clerk. Councilwoman Steiner seconded the motion.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

II. APPROVAL OF ABSTRACT

RESOLUTION # 77-2012

Councilwoman Sluberski moved, Be It Resolved, that having audited all the claims against the funds listed on Abstract #3-2, for vouchers #282 through #340, that they be allowed in the amount of \$41,439.72 Councilman Riepe seconded the motion.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

III. CORRESPONDENCE

Supervisor Anderson stated that Time Warner Cable will be representing 7 regional entities and has been renamed Time Warner Cable Northeast, LLC, however, changes will be seamless to those residents serviced by them. They are sanctioned by the Town of Rush.

Monroe County Planning has provided a no comment/approved action to the Section 239-m filed with them in order to petition for a moratorium on hydrofracking.

Monroe Community College has provided a Rush Rifle Range March calendar of use that has also been posted to the website.

IV. REPORTS OF OFFICERS AND COMMITTEES

Pursuant to Section 27, Subdivision 1 of Town Law, Town Clerk Bucci has \$15,115.50 in revenues for the month of March 2012, particularly attributed to Recreational and Pavilion payments.

As of March 27, approximately \$3,695,000.00 in town and county taxes have been collected. Third installments are due by March 31st and 4th installments will be collected at the town through April 30th. For an informational point, Town Clerk Bucci stated that at the beginning of the every year the Supervisor requests that an ad be in the newsletter requesting resident interest for the different Boards within town. The Town may not be looking to fill a position at that particular time but all resumes and or letters of interests are kept on file for 3 years. If there are not ample resumes on hand when a position becomes open, I may place a specific ad. After interviews have been conducted each applicant receives a letter of congratulations or that we will keep their application on file.

Councilman Riepe attended the Fire Commissioner's meeting and thanked the Fire Department for their services provided in the recent town hall fire. Councilman Riepe also attended the Planning Board meeting.

Councilman Riepe provided an updated on the recent break-ins in the Town of Rush. Although unaware at the time, the thief appeared at his door and asked for a random person's name then left. A Monroe County Sheriff visited Councilman Riepe requesting a photo identification of a person that was apprehended in Rochester which was a match.

Councilman Riepe also asked for the Board's consideration in raising the reward for information to the damage and disappearance of the Town of Rush Welcome sign on Route 15 A.

Councilwoman Sluberski had no report.

Councilwoman Steiner attended the Rush-Henrietta School District's budget proposal meeting. Local Town Board members were invited to attend. Superintendent Graham is proposing a tentative 1.9% tax rate increase.

Councilman Woolaver attended the Monroe County Agricultural Farmland Protection meeting. Supervisor Anderson added that there is some editing to be done in the draft plan, however, it is complete. Anyone wishing to view it may visit the Town Clerk's Office.

V. OLD BUSINESS

A. BOCES Property Update - Supervisor Anderson along with Councilman Riepe met with the NYS Railroad Museum folks. They are in the process of reviewing their property and drainage situation in order to install a septic or holding service system. The Town is checking into the legalities of granting an easement on the town's property should it be deemed necessary.

(1) Bid Opening of March 12, 2012 - Supervisor Anderson stated that a bid opening on the Agricultural Quote Package took place as advertised on March 20, 2012, at 11:30 AM in the Town Clerk's Office. All quotes were opened and read aloud. Supervisor Anderson explained specifics of the parcels and that there were 3 parts to be bid on, either together or separately. Supervisor read aloud all persons who either requested or submitted a bid. They are as follows:

Parcel A: number of fields adjacent to the river—approximately 48.1 acres

Parcel B: series of fields comprising of 51.4 acres on the former BOCES property

Parcel C: pasture land contained in the former BOCES property

Paul Miller c/o Miller Farms
Chase Partners
Volkman Farms LLC
David Meisenzahl
Selden Stokoe & Sons Inc.

Paul Stein & Sons, LLC
Mike Krenzer
B&E Farms
Mulligan Farms

Bids for Parcels A & B were awarded to Mulligan Farms. The Bid for Parcel C was awarded to Dan and Bill Chase of Chase Partners.

B. Resolution to Award Contracts on Agricultural Quote Packages - Supervisor Anderson proposed approval and resolutions for both parties. The quote package bids are available for inspection in the Town Clerk's Office.

RESOLUTION # 78-2012

Councilwoman Sluberski moved to authorize Supervisor Anderson enter into a five-year lease with Jeffrey Mulligan of Mulligan Farms, 5403 Barber Road, Avon, New York 14414 for Parcel A: 48.1 acres of land located at 375 Rush Scottsville Road, Rush, New York for \$155.00 per acre, and; Parcel

B: 51.4 acres of land located at 6565 East River Road, Rush, New York for \$182.00 per acre. Councilman Riepe seconded the motion.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

RESOLUTION #79-2012

Councilwoman Sluberski moved to authorize Supervisor Anderson enter into a five-year lease which is an extension of Mulch Hay Harvesting Agreement already executed by Dan Chase, Chase Partners, 5874 East Henrietta Road, Rush, New York for \$25.00 per acre. Councilman Riepe seconded the motion.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

C. Town Hall Fire Update – Supervisor Anderson stated that a fire broke out in the Town Hall on March 5, 2012, creating a lot of water damage. Except for carpet replacement, rehabilitation occurred very quickly. Carpet came in today. The vaulted recorded room remains untouched until insurance and or legal proceedings are done. Records are being held until transport is requested.

PUBLIC HEARING 7:15 PM – Proposed Hydrofacking Moratorium

Supervisor Anderson declared the public hearing on Proposed Moratorium on Hydrofracking open at 7:15 PM. Town Clerk Bucci read the public notice as follows into the record.

**NOTICE OF PUBLIC HEARING
ON MORATORIUM ON A 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
LOCAL LAW 1 OF 2012
OF THE TOWN OF RUSH**

PLEASE TAKE NOTICE, a public hearing will be held by the Rush Town Board, at the Rush Pavilion, 5977 East Henrietta Road, Town of Rush, New York, on the 28th day of March at 7:15 PM, local time, for the purpose of establishing a Moratorium, 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.

Copies of the proposed Local Law #1 of 2012 are available for inspection at the Town Clerk's Office during normal business hours.

At such hearing any person may be heard in favor of or against the revisions to the Rush Town Code as proposed at the above time and date. By Order of the Rush Town Board.

The legal notice was published in both the Sentinel and the Genesee Valley Pennysaver. It was also posted on the Town Clerk bulletin board and the town website.

Supervisor Anderson introduced Charles Steinman, legal counsel, representing the Town on hydrofracking moratorium issues.

Charles Steinman, Esq., stated that a draft Memorandum on the Hydrofracking Moratorium has been provided to Supervisor Anderson which gives the town it's best legal opinion on the matter. The Memorandum of Opinion is attorney-client privileged information. Since the writing of the draft, cases have been decided upon by a lower Supreme Court decision. Attorney Steinman does believe the cases will be heard in a higher court; Appellate Division. The NYS Legislature may enact some legislation on the topic, however, the opinion of the town's legal counsel on the Memorandum remain the same.

Resident Robin Rapport inquired about the attorney-client privileged information. Attorney Steinman stated that he was not at liberty to discuss that particular information.

Supervisor Anderson stated that until a decision has been made by a higher court, Appellate Division, it is unclear whether or not the moratoriums will be reversed. As Supervisor Anderson cautioned at earlier meetings, there is a reasonable chance that an energy company may try to sue towns that have passed moratoriums.

Rush Residents Christopher Giordano, Robert Kraus, Carol Barnett, Beth Hoak, Pat Kraus, Marcia Erwin, Joseph Lomedico, Marianne Rizzo, Carolee Powers, Julia Lederman, Clara Mulligan, Kathryn Hankins, Jordan Kleinman all spoke in support of a hydrofracking moratorium. All have supplied a written copy of their opinions that are attached hereto.

Penfield Resident Peter Maurer stated his opinion of lack of trustworthiness of the energy companies, decrease in property values and costs associated with maintaining roads being traveled on by heavy equipment.

Resident Marcia Erwin is in favor of a moratorium in order to provide additional time to research the subject and make an informed decision.

Resident Joseph Lomendico is one of many residents receiving water from his well and is concerned about chemical contamination for the present and future. Nondisclosure agreements are made with the gas companies. Mr. Lomendico values the character of Rush and doesn't want to see it change.

Resident Robin Rapport discussed leasing of land and the lack of having decision making ability if hydrofracking was to occur. He supports a hydrodracking moratorium.

Rush Resident Dave Sluberski, as a leader in the community, supports a hydrofracking moratorium.

Student Lauren Bomelse spoke of her personal experience living with a family in Franklin Forbes and Dimock, Pennsylvania, in order to write an essay on the affects of living in a town that allows hydrofracking. She was subject to many negative experiences.

Resident Julia Lederman, member of the Rush Conservation Board, stated she holds a position of keeping the best interests of the town in hard, and believes that supporting a hydrofracking moratorium is in the best interest of the town.

Resident Kathryn Hankins appreciates the support and partnership of neighboring towns in joining communities across the state in adopting hydrofracking moratoriums.

Resident Peter Kim-Fredell stated his strong support of a moratorium.

With all persons desiring to be heard, Supervisor Anderson closed the hearing at 8 PM.

The regular meeting was reconvened.

VI. NEW BUSINESS

A. Resolution of Hydrofacking Moratorium – Supervisor Anderson requested a resolution on the proposed moratorium.

RESOLUTION #80-2012

ADOPTION OF LOCAL LAW NO. 1 OF 2012 - MORATORIUM ON A 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

WHEREAS, The purpose of the Local Law is to enable the Town of Rush 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 Rush 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.

WHEREAS, a public hearing on proposed Local Law No. 1 of 2012 was conducted by the Town Board of the Town of Rush on March 28, 2012, wherein the public was provided an opportunity to submit and speak their comments on the proposed legislation.

NOW, THEREFORE, BE IT RESOLVED that the proposed Local Law #1 of 2012 entitled "A Local Law instituting a moratorium on approvals concerning

the exploration and extraction activities, underground storage of natural gas and disposal of natural gas or petroleum extraction, exploration and production wastes in the Town of Rush” shall be adopted and that the Code of the Town of Rush be amended to incorporate such local law; and

BE IT FURTHER RESOLVED that the Town Clerk published or caused published notice of said public hearing in the official newspaper of the Town at least five (5) days prior thereto.

BE IT FURTHER RESOLVED that the adoption of Local Law 1 of 2012 is a “Type II” action pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as “SEQRA”), and thus exempt from SEQRA review; and

THEREFORE, Councilwoman Sluberski motioned to adopt Local Law No 1 of 2012, Moratorium On A 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. Motion was seconded by Councilman Riepe.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

B. Replacement of Highway Department's Overhead Truck Bay Door – Supervisor Anderson stated pursuant to the Town Procurement Policy, Town Board approval is not required for Highway Department minimum purchases, however, Superintendent Mark David has received four quotes and has chosen Tracy Door Company to replace the overhead door.

RESOLUTION # 81-2012

Councilwoman Sluberski moved to accept Highway Superintendent Mark David's recommendation to award Tracy Door Company, 238 McKee Road, Rochester, New York 14611 replacement of the overhead bay door for an amount not to exceed \$3,000.00. Councilwoman Steiner seconded the motion.

Roll:

Councilman Riepe	aye
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Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

B. Renewal of Contract with Suburban Animal Hospital for Dog Sheltering – Supervisor Anderson stated that the one-year contract with Suburban Animal Hospital is part of the town’s dog sheltering responsibility within the Town Code. The rates of the contract are unchanged.

RESOLUTION #82-2012

Councilwoman Sluberski motioned to allow the Supervisor to enter into a one-year agreement with Suburban Animal Hospital for dog sheltering for established rates for the year 2012. Councilman Riepe seconded the motion.

Roll:

Councilman Riepe	aye	
Councilwoman Sluberski	aye	
Councilwoman Steiner	aye	
Councilman Woolaver	aye	
Supervisor Anderson	aye	carried.

VII. OPEN FORUM

Resident Dave Sluberski commended the Town Board on passing the moratorium. He also asked why there was no open forum at the beginning of the meeting. Supervisor Anderson stated that it was strictly to move the public hearing of the meeting forward.

Robert Kraus asked that since the hydrofracking moratorium was approved, would the town be forming a citizen’s committee to further investigate the subject. Supervisor Anderson stated that the town will form a committee but may have to wait to act further until additional ruling has occurred.

Resident Robin Rapport asked whether or not the moratorium is now enacted and for how long. Supervisor Anderson stated that the moratorium is enacted upon filing and is for 1 year.

Another resident asked when the moratorium will begin. Supervisor Anderson answered that the contract is dated March 29, 2012. Town Clerk Bucci added that the moratorium becomes effective once it is filed with New York State.

Resident Roger Tobey asked Audience member Clare Mulligan whether or not Avon or other surrounding towns have adopted hydrofracking moratoriums. Ms. Mulligan stated that Avon is in the process of presenting it to the County and then before the Town. Geneseo has also passed a moratorium.

VIII. ADJOURNMENT

There being no further business, the meeting was ended at 8:15 PM and approved by common consent of all councilpersons present.

Respectfully submitted,

Pamela J. Bucci
Town Clerk