

RUSH TOWN BOARD
Minutes of February 13, 2013
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 February 13, 2013, at the Rush Town Hall, Rush, New York. Everyone present participated in the Pledge of Allegiance.

PRESENT:	Richard Anderson	-----	Supervisor
	William Riepe	-----	Councilperson, Deputy Town Supervisor
	Kathryn Steiner	-----	Councilperson
	Cathleen Frank	-----	Councilperson
	Daniel Woolaver	-----	Councilperson
	Pamela Bucci	-----	Town Clerk
	John Mancuso, Esq.	-----	Town Attorney
	Charles Steinman, Esq.	-----	Town Attorney

OTHERS

PRESENT:	Mark David	-----	Highway Superintendent, Resident
	Ansgar Schmid	-----	Resident
	Carol Barnett	-----	Resident
	Julia Lederman	-----	Resident, Conservation Board member
	Robert Powers	-----	Resident
	Dave Sluberski	-----	Resident
	Beth Hoak	-----	Resident
	Jordan Kleiman	-----	Resident
	Marianne Rizzo	-----	Resident
	Bill & Jean Stephens	-----	Resident
	John Felsen	-----	Planning Board Chair, Resident
	Don Sweet	-----	Planning Board member, Resident
	Ted Barnett	-----	Resident
	Pat Kraus	-----	Resident, Conservation Board member
	Robert Kraus	-----	Resident
	Ed Walsh	-----	Town of Mendon Resident
	John Morelli	-----	Planning Board Vice-Chair, Resident
	Kathryn Hankins	-----	Resident
	Judy Wright	-----	Guest Speaker

Supervisor Anderson opened the meeting stating that Judy Wright, NYS Field Consultant, American Farmland Trust and Interim Executive Director of Cornell Cooperative Extension, has been invited to provide a presentation on Farmland Protection and the Right-to-Farm Law.

PRESENTATION 7 PM – Judy Wright, American Farmland Trust

Ms. Wright brought a few copies of the Farmland Protection Annual Report; Councilperson Riepe has a copy. The report is also available on line. Also on hand were copies of Planning for Agriculture Guide American Farmland Trust.

Ms. Wright congratulated the Town in forming a volunteer group to compile a Farmland Plan that was adopted in September 2012 with matching NYS grant funds. She highlighted a few aspects in her presentation including the 2010 census which Rush had just under 8000 acres, representing 122 parcels. In 1992 Rush had just over 9600, 132 parcels of agriculture land which is a significant reduction. The cost of community services looks at revenue generated from property taxes compared to amount of services versus property taxes from amount of agriculture land and what services are required. The more development, the more demand for services which presents a challenge to towns is balance development and keeping good quality farmland without taxes increasing. The State recommended Rush re-establishing a Farmland Advisory Committee which provides an informed committee. She cautioned the Town on creating roadblocks for farmers in changing zoning laws and provided an example related to signage.

Another recommendation from the State was for Rush to establish an Agricultural Zoning District – block of land. The preferred use is agriculture, however, houses may be built on land with additional conditions related to the zone. Right to Farm Law helps which persons purchase homes that are built in an agriculture zone. The subdivision of land can buffer the land.

The Farmland Protection Land Trust is located in Monroe County – Genesee Land Trust works to help communities protecting farmland. NYS does not have an active Farmland Protection Plan. Donating an easement guarantees an agriculture land. Within the Town Plan - Purchase- appraisal process which reimburses the farmer through development rights. Transfer of rights – requires some town input – sophisticated technique and commitment of staff time to help manage the technique. This process is difficult for small staffed towns. The developer is charged additional funds for higher concentration and concentrated services and the monies are then used for protective rights.

At the Supervisor's direction, a question and answer period evolved.

Jerry Horton, Chair of the Recreation Agriculture Citizens Committee asked where the Cornell Cooperative was located; Ms. Wright answered, Highland Drive, Rochester.

Resident Dave Sluberski stated that he has done some research and supports the Right-to-Farm law.

Marianne Rizzo stated that she supports the Right-to-Farm law.

Supervisor Anderson has copies of Right-to-Farm Laws that he has circulated to the Board and asked Ms. Wright if there were plans that she preferred. Ms. Wright stated that she would recommended and believed a shorter version, 1-2 pages is sufficient for a town of Rush's size and geography. The website may provide additional examples, i.e. Town of Brutus, Town of Eden.

Councilperson Riepe asked if the agriculture protection plan was well received in Monroe County. Ms. Wright stated that Rush, Parma and a few other towns are in the forefront of reviewing farmland protection plans.

John Morelli, Vice-Chair of the Planning Board, discussed the Comprehensive Plan of 1992, community protection, rezoning and funds available to continue its work. Assuming that the economy grows, Ms. Wright stated that New York may be offering a Request For Proposal (RFP) of purchasing farmland development rights in 2014.

Resident Jordan Kleinman asked if there are any mechanisms in the Right-to-Farm that address CAFOs (Concentrated Animal Feeding Operations) so that there aren't contaminations. Ms. Wright stated that it will address CAFOs that are defined by the number of animals and weight. The State has not stated that one type of animal will be excluded from another animal and Ms. Wright suggested caution.

Resident Kathryn Hankins asked if a Right-to-Farm Laws runs the risk of CAFOs? Ms. Wright stated that Monroe County does not have a Right-to-Farm Laws. Lawsuits may be an issue whether or not towns have these laws.

I. OPEN FORUM

Supervisor Anderson resumed the meeting offering the floor to others who wished to address the Board.

Resident Kathryn Hankins stated that she misspoke at the January 23, 2013, meeting and requested a change in her statement. Page 9, Paragraph 3; change Type II to a Type I action.

Resident Dave Sluberski read aloud his notes stating that he was surprised to read reference to gas drilling in the Code, he requested a zoning map be

placed on the website, he requested additional information on planning matters before the town, wished that additional courtesies were offered to residents, wished to have more information on planning and zoning provided in the newsletter, even though they are posted and published, wished the Town Board members would read other Board agendas at the Town Board meeting. Mr. Sluberski read aloud information on informal presentations before other town boards. He is concerned that these projects would negatively impact the community in reference to traffic. Mr. Sluberski gave an example of increased traffic on Rush West Rush Road and that he cannot get across it at times to get his mail.

Town Clerk Bucci requested a copy of his read aloud statements. Mr. Sluberski replied that he would forward a copy.

II. APPROVAL OF MINUTES

RESOLUTION #59-2013

Councilperson Steiner moved to approve the Regular Meeting Minutes of January 23, 2013, submitted by Town Clerk Bucci with an amendment as set forth above. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

III. APPROVAL OF TRANSFER

Supervisor Anderson stated that transfers were not required.

IV. APPROVAL OF ABSTRACT

RESOLUTION #60-2013

Councilperson Steiner moved, Be It Resolved, that having audited all the claims against the funds listed on Abstract #2-1, for vouchers #92 through #159, be allowed for payment in the amount of \$41,195.77. Councilperson Riepe seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

V. CORRESPONDENCE

Homeland Security - Supervisor Anderson received a letter from County Executive Maggie Brooks stating that Monroe County is partnering with NYS Department of Homeland Security and Emergency Services to provide short workshops for elected supervisors and mayors regarding local emergency preparedness.

The Monroe County Sheriff's Office has apprised Supervisor Anderson that there have been numerous reported thefts of cadillatic converters being cut from the underside of cars to be sold as scrap metal.

Supervisor Anderson stated that the Rush Henrietta School District Student Safety Committee now directed by Mr. Palidino will be adding Rush's Emergency Preparedness Officer Rick Tracy to the committee. Supervisor Anderson read the agenda in its entirety. Monroe County's S.W.A.T. team recently performed S.W.A.T. training at a school within the Rush-Henrietta District.

Supervisor Anderson read aloud a note from Ms. Linda Nevaldine, Carol Nevaldine's daughter, whose grandmother was a cousin of Bessie Hallock, who wrote *Here on the Hilltop* manuscript, thanking the town for publishing the book which she enjoyed reading.

VI. REPORTS OF OFFICERS AND COMMITTEES

Councilperson Riepe attending the Citizens Working Committee on Hydrofracking. As board liaison to both, he will be attending the Fire Commssioner's and Planning Board meetings later this month.

Councilperson Steiner, as board liaison, reported that she had attended the Recreational Agricultural Citizens Committee and she will be researching for a few answers to questions for the Committee related to insurance, security and present leases.

Councilperson Riepe asked if there was continued interest of handicapped individuals in the riding barn located on the town-owned BOCES property. Supervisor Anderson stated that no one has approached him.

Supervisor Anderson will be participating in webinars research healthcare for municipalities and towns with less than 50 employees. An update will follow.

Supervisor Anderson received copies of resolutions on 2 bills before the Assembly. The bills relate to financial institutions being more accountable for foreclosure properties maintenance. Supervisor Anderson will be discussing the

resolutions at the Monroe County Supervisor's Association meeting and will report further. There are maintenance problems with foreclosing Rush properties.

Councilperson Steiner added that she attended the Conservation Board meeting where a letter support on the hydrofracking was distributed to the Town Board.

Councilwoman Frank, as liaison, attended the Library Board of Trustees meeting. They reported that Monroe County libraries as a whole experienced lower than normal circulation, possibly due to weather and change in demographics or the number of e-readers. The 9th annual Friends Night Out benefit will be held March 9th at the Rabbit Room in Honeoye Falls.

Woolaver reported that he attended the Citizens Working Committee on Hydrofracking public meeting on Monday, February 4th. He also attended the Conservation Board meeting.

Town Clerk Bucci reported that she had received 1 application for the Board of Assessment Review and 4 applications for the Conservation Board. The Board will set up and conduct interviews. She submitted the monthly Town Clerk Report to the Supervisor for revenue in the amount of \$6,269.71 attributed to Pavilion rentals and recreation programs. Almost \$3,000,000 of approximately \$4,271,000 of town and county taxes have been collected with the town tax portion fully collected and provided to the Supervisor. The County portion of taxes continues to be collected and forwarded to the Monroe County Treasurer.

VII. OLD BUSINESS

A. Right to Farm Law – Supervisor Anderson asked the Planning Board members present that after viewing the examples presented and Judy Wright's presentation, if they were ready to make a recommendation to the Board on which Right-to-Farm Law should be used as a template for Rush. Planning Board Chairman John Felsen stated that the Planning Board would like to make a recommendation, however, they will recommend more than one. The Town of Gorham is being reviewed. Planning Board Member Don Sweet stated that the Town of Brutus should be reviewed because of its similarities to Rush. Mr. Sweet additionally stated that Rush also has the pressure of large lot development.

VIII. NEW BUSINESS

B. Appoint Attorney Charles Steinman to represent the Town on Hydrofracking Matters – Supervisor Anderson requested Board approval to enter into an agreement

with Charles Steinman, Esq., as counsel on substantive legal issues with respect to a hydrofracking moratorium.

RESOLUTION #61-2013

Councilperson Riepe motioned to appoint Charles Steinman, Esq., as counsel to represent the Town of Rush with respect to substantive legal issues on hydrofracking moratorium matters. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

Supervisor Anderson added that the reason Attorney Charles Steinman is representing the town on the hydrofracking moratorium is due to a conflict of interest with Frank Pavia, Esq., of Harris, Beach representing drilling companies in other parts of the state.

Supervisor Anderson stated that the Town is in receipt of the Citizens Working Committee on Hydrofracking Report. Following the Town Board's enactment of the Moratorium on gas Drilling-related Activities on March 28, 2012, the Board created the Citizens Working Committee on Hydrofracking. The Committee's mission was to study the potential impact on hydrofracking, evaluate the Town's zoning ordinances and make recommendations concerning proposed legislation or amendments to existing laws. The Board has received the extensive report of the Committee, dated January 21, 2013. The Board would like to express their appreciation to all the members of the Committee, who have obviously expended much time and effort conducting its study of this complicated issue and providing the Town with a thorough and detailed report. The Board will study the report in detail and take all of its findings and recommendations under advisement.

Additionally, Supervisor Anderson has contacted 2 separate planning and engineering firms to review the recommendation process of the hydrofracking materials presented. Supervisor Anderson has chosen a non-biased firm who have worked with the town on the reconstruction of the dam, linear trail, and a number of town planning activities. All information has been forwarded to Larsen Engineers. Their response will be returned to him within the next 2 weeks. At that time, structure issues in adopting changes to zoning or planning regulations will be discussed.

Supervisor Anderson met with the co-chairs of the Zoning and Planning to discuss possible changes. They agreed that because of the complexity, changes in the Code will be handled one at a time.

Supervisor Anderson also received a letter from the Wierzba family who attended the public meeting video tour of hydrofracking sites in Pennsylvania. Their letter states that they would urge the Board to thank the Working Committee for their efforts which involved a substantial amount of personal time but to dismiss much of their findings due to the clear bias of the leadership and sources. They urged the Board to obtain legal representation that is also not biased. (Town has obtained separate counsel.) Shale gas exploration has the potential to provide a great opportunity and great risk for the Town of Rush and its residents and the quality of life, now and for years to come. The Town's future is too important to base its decision on the findings and guidance of the Rush Citizens Working Committee on Hydrofracking. They also urged the town to get a second review, which the Town is already in the process of doing.

Larsen Engineers has been forwarded information on current zoning laws and the CWC recommendations for change for comparative analysis and any unanticipated consequences. Larson Engineers are also engaged with the Town of Avon and its planning process.

After discussing the matter with legal counsel, Supervisor Anderson would like to propose a resolution to introduce a proposed extension of the hydrofracking moratorium.

Planning Board member Don Sweet asked how the moratorium extension would affect drilling allowed in Rush. Mr. Sweet stated that vertical and horizontal drilling are different entities and he cautioned Rush in becoming part of a lawsuit as Avon. Mr. Sweet is in contact with a number of farmers in western New York with vertical wells and has not heard of contaminating problems with vertical drilling.

Resident Jordan Kleiman stated that there are existing wells in Avon that have been grandfathered. Rush is not in the same situation, even though Rush has different types of wells. Both drilling processes have contaminating possibilities.

Attorney Steinman understands that the Board wishes to extend the existing Moratorium which became effective March 28, 2012. A Local Law has been prepared for consideration which allows for a moratorium continuation of 6 months. There are a number of procedural steps to be taken. The Citizens Committee report and zoning code needs to be further analyzed and

evaluated in order to make a decision. Attorney Steinman will provide the Board with a draft of the Local Law. A public hearing will then be set.

RESOLUTION #62-2013

Supervisor Anderson moved

INTRODUCING PROPOSED LOCAL LAW #1 OF 2013 EXTENDING TOWN OF RUSH
LOCAL LAW NO 1 OF 2012 ESTABLISH A MORATORIUM AND PROHIBITION OF
NATURAL GAS AND PETROLEIUM EXPLORATION AND EXTRACTION
ACTIVITES IN THE TOW NOF RUSH

WHEREAS, by Town of Rush Local law No. 1 of 2012, the Rush Town Board (the "Town Board") enacted a Moratorium and Prohibition within the Town of Rush, Monroe 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 ("the Moratorium") within the Town of Rush for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity of the people of the Town of Rush; and

WHEREAS, since the enactment of Local Law No. 1 of 2012, the Town Board has made diligent efforts to study the potential effects of the activities addressed in Local Law No. 1, including but not limited to the creation of a Citizens Working Committee on Hydrofracking, which has submitted its January 21, 2013, Report to the Town Board; and

WHEREAS, despite the work done by the Town Board, additional time is required to study the aforementioned Report and its recommendations, which include substantial amendments to the Rush Zoning Code; and

WEHREAS, it has been recommended that it is in the best interests of the Town of Rush that there be introduced a local law enacting a six (6) month extension of the Moratorium, to be set forth in a proposed Local Law.

NOW, THEREFORE, BE IT RESOLVED that Local Law No 1 of the year 2013 entitled "A Local Law extending a Moratorium and Prohibition with the Town of Rush, Monroe County, New York of Natural Gas and Petroleum Exploration and Extraction activities, Exploration and Production Wastes" shall be processed and that the Code of the Town of Rush be amended upon enactment to incorporate such Local Law.

BE IT FURTHER RESOLVED that the enactment of proposed Local Law No. 1 of 2013 is exempt from review under the State Environmental Quality Review Act as a Type II action; and

BE IT FURTHER RESOLVED that copies of the aforesaid proposed Local Law No. 1 be laid upon the desks of each member of the Town Board as required by law; and

BE IT FURTHER RESOLVED that the Town Board shall hold a public hearing on said proposed Local Law No. 1 at the Rush Town Hall at a date and time to be determined; and

BE IT FURTHER RESOLVED that the Town Clerk publish or cause to be published a notice of said public hearing in the official newspaper of the Town at least five (5) days prior to said hearing; and

BE IT FURTHER RESOLVED that the Town Clerk cause to be published a notice of said public hearing in a paper of general circulation in the Town at least ten (10) days prior thereto; and

BE IT FURTHER RESOLVED that the Town Clerk provided notice of the proposed amendment of the Town Code to parties entitled to notice pursuant to New York Town Law §264(2) at least ten (10) days prior thereto; and

BE IT FURTHER RSOLVED that the Town Clerk shall refer the proposed Local Law to the Monroe County Planning Board, pursuant to New York General Municipal Law §239-m within five (5) days of this Resolution. Motion was seconded by Councilperson Kathryn Steiner.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

IX. NEW BUSINESS

A. Highway Department Purchase of 2 New Zero Turn Mowers – Supervisor Anderson stated that Highway Superintendent David requests the purchase of 2 new mowers for use in the Park’s Department through NYS bid contract through Office of General Services in the amount of \$19,000.00 which is in the approved 2013 budget.

RESOLUTION #63-2013

Councilperson Riepe moved to allow Highway Superintendent to purchase 2 new zero turn mowers for use in the Parks Department. Mowers will be purchased from New York State bid contract through Office of General Services, Award Number 21459-PF, Contract Number PC64365 in the amount of \$17,045.48 under the 2013 budget approved A-7110.2 Parks Capital Equipment Outlay account. Councilperson Frank seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

B. Highway Department Dispose of 2 2008 John Deere 777 model zero turn mowers – Supervisor Anderson stated that Highway Superintendent David requests the disposal of two 2008 John Deere 777 mowers at a municipal auction on May 11, 2013. The mowers are expected to produce \$4,000-\$4,500 per unit.

RESOLUTION #64-2013

Councilperson Riepe moved to allow Highway Superintendent Mark David to dispose of two 2008 John Deere 777 model zero turn mowers at municipal action on May 11, 2013. Councilperson Steiner seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

C. Undertaking with NYSDOT for Work Within the State Right of Way PERM 1 (2/12) – Supervisor Anderson stated that Highway Superintendent David requests approval to enter into a 20 year agreement for the Undertaking with NYSDOT for work within the State Right of Way.

Highway Superintendent stated that the last Undertaking was of the same length and is a formal pledge to work in the Right of Way, restoring the area worked to its original condition.

RESOLUTION #65-2013

Councilperson Steiner moved that Highway Superintendent Mark David be authorized to enter into an UNDERTAKING for the benefit of The New York State

Department of Transportation in connection with work affecting state highways which has a term of twenty (20) years. Councilperson Riepe seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

D. Resolution authorizing Attendance at Annual Association of Towns Training and Meeting – Supervisor Anderson stated that Councilperson Woolaver will be attending the annual meeting.

RESOLUTION #66-2013

Councilperson Frank moved to authorize Councilperson Woolaver to attend the Annual Association of Towns Training and Meeting in New York City, February 17-20, 2013, with funds provided in the approved 2013 town budget. Councilperson Steiner seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

E. Resolution authorizing Councilperson Woolaver to be the Designee at the Association of Towns Meeting for Voting upon Resolutions – Supervisor Anderson stated that Councilperson Woolaver will be the Designee for the Town of Rush and that all resolutions were read aloud at a prior Town Board meeting.

RESOLUTION #67-2013

Councilperson Steiner moved to appoint Councilperson Woolaver to be the Town's Designee at the 2013 Association of Town's business meeting on resolutions presented. Councilperson Riepe seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

F Resolution to approve Assured Maintenance Agreement #C1299 with McQuay International – Supervisor Anderson stated that McQuay International performs maintenance, repairs and emergency services. The price remains the same.

RESOLUTION #68-2013

Councilperson Riepe moved to authorize the Supervisor to enter into a renewal Assured Maintenance Agreement #C1299 with McQuay International for maintenance, repairs and emergency. Councilperson Woolaver seconded the motion.

Roll:

Councilperson Riepe	aye	
Councilperson Steiner	aye	
Councilperson Frank	aye	
Councilperson Woolaver	aye	
Supervisor Anderson	aye	carried.

X. OPEN FORUM

Supervisor Anderson offered the floor to anyone wishing to address the Board.

Resident John Morelli asked whether or not the town pays McQuay for taxes as stated in the contract read aloud. Supervisor Anderson stated that although there is reference in the agreement to applicable taxes, the Town is tax-exempt.

Resident Jordan Kleiman stated that he disagreed with the resident letter submitted suggesting bias of leadership regarding the public meeting and video showing of the Citizens Working Committee on Hydrofracking.

Supervisor Anderson, although he paraphrased the letter received, the resident believed that the report was one-sided and that nobody represented the side of the drilling groups or gas industry.

Resident John Morelli, who attending the public hydrofracking presentation, and stated that the Department of Environmental Conservation (DEC) will be providing a policy or law on hydrofracking wanted to know if an extended moratorium or a banning would be most beneficial.

Attorney Steinman stated that until the State and DEC provides a regulation or decision on hydrofracking, he cannot provide an absolute answer.

Resident Jordan Kleiman further asked about Home Rule and additional hydrofracking scenarios and recommended that David Slotjee present on hydrofracking at the next Town Board meeting.

Attorney Steinman restated that he could not now make a recommendation without decisions by the DEC or State.

Resident Kathryn Hankins stated that she supported the 6 months moratorium in order to make a thorough investigation and that not everyone on the Citizens Working on Hydrofracking Committee is pro or against fracking. The Committee only worked to take care of Rush.

Resident Carol Barnett stated that she encouraged the Board not to prolong the 6 month moratorium extension and to act quickly on the hydrofracking matter.

Supervisor Anderson stated that he is anticipating Larsen Engineering response within 2 weeks and he additionally wishes not to prolong the matter.

Resident John Morelli commented on drilling and banning. He believed that it is difficult to ban or permit one regulated type of drilling versus another.

XI. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor Anderson at 8:35 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci
Town Clerk