

RUSH TOWN BOARD  
Minutes of March 20, 2013  
Regular - PUBLIC HEARING

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:15 PM on March 20, 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

OTHERS

PRESENT:	Marianne Rizzo	-----	Resident
	Ansgar Schmid	-----	Resident
	Carol Barnett	-----	Resident
	Dave Sluberski	-----	Resident
	Julia Lederman	-----	Resident
	Beth Hoak	-----	Resident
	Bob Nilsson	-----	Resident
	Kathryn Hankins	-----	Resident
	Robert Powers	-----	Resident
	Carolee Powers	-----	Resident
	Robert Nesbitt	-----	Resident
	Laura Henry	-----	Resident
	Robert Kraus	-----	Resident
	Lee Hankins	-----	Resident
	Marcia Erwin	-----	Resident
	Norman T. Erwin	-----	Resident

I. PUBLIC HEARING - Proposed Local Law 1 of 2013 – Extension of Moratorium on Hydrofracking - Supervisor Anderson declared the Public Hearing open at 7:15 PM and announced that the public hearing was the only business item for the evening.

Following the distribution of the proposed Local Law to the Town Board members, it was also posted along with the public hearing notice to the town website, and duly published in the Sentinel, Henrietta Post and local PennySaver. The proposed law and notice was also provided to adjoining town Town Boards, as well as Monroe and Livingston County Planning.

Town Clerk Bucci read the Notice of Hearing for the record.

Resident Kathryn Hankins read a prepared document encouraging the Town Board to pass the Extension of the Hydrofracking Moratorium. Mrs. Hankins is in support of the Citizens Working Committee on Hydrofracking recommendation of amending the zoning ordinances of the Town Code.

Resident Jean Yawman submitted a letter supporting the extension of the hydrofracking moratorium.

With all persons desiring to be heard, Supervisor Anderson closed the hearing at 7:24 PM.

**RESOLUTION #76-2013**

Supervisor Anderson moved to approve the following as submitted

**TOWN OF RUSH LOCAL LAW No.1 of 2013**

A Local Law to effect the extension of Town of Rush Local Law No.1 of 2012, a Moratorium and Prohibition within the Town of Rush, 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.

**BE IT ENACTED** by the Town Board of the Town of Rush, Monroe County, New York, as follows:

**Section 1. Title**

Town of Rush Local Law No 1. of 2013 shall be known as the "Extension of the Moratorium and Prohibition within the Town of Rush, 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."

**Section 2. 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 Rush 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.

**Section 3. Incorporation of Town of Rush Local Law No.1 of 2012**

The Town of Rush Local Law No.1 of 2012 is annexed hereto and is specifically incorporated herein by reference with Town of Rush Local Law No.1 of 2013.

**Section 4. Necessity for Extension of Moratorium and Prohibition**

Since the enactment of Town of Rush Local Law No.1 of 2012, the Rush Town Board has made diligent efforts to study the potential effects of the activities addressed in that Local Law, 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. 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.

**Section 5. Extension of Moratorium and Prohibition**

Based upon the foregoing necessity, Town of Rush Local Law No.1 of 2012 is hereby extended for a period of six (6) months.

**Section 6. 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 7. 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 Rush; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Rush.

**Section 8. Effective Date.**

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

Councilperson Riepe 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 six (6) month extension commences March 2013 through September 2013. The Citizens Working Committee on Hydrofracking has provided a number of recommendations and the Board has requested and received an Engineering evaluation as it pertains to the Town Code. Those recommendations are (1) await DEC and Health Department recommendations, (2) await other community recommendations (3) revise zoning portion of the Town Code (4) amend the Citizens Committee report and ask the Town Board to adopt it as an amendment to the Comprehensive Plan (5) draft and adopt a new Local Law legally implementing the recommendations of the Committee as it may be endorsed by the Town Board.

The Citizens Committee has been distributed a copy of the Professional Planners Review and Qualifications of the Reviewer. A copy of a ban, done by Town of Brighton to prohibit hydrofracking has also been distributed. All documents will be reviewed and a compiled working document created. Documents will also be circulated to the Planning, Zoning and Conservation Boards requesting review and an expected response within one month.

Supervisor Anderson opened the floor to questions.

Resident Marcia Erwin asked how long before changes would be decided.

Supervisor Anderson stated that a proactive and rapid pace is planned. The six month extension should provide an appropriate timeframe.

Resident and Co-Chair of the Citizens Working Committee on Hydrofracking Carol Barnett asked whether the Planning or Zoning Boards had a response to the Committee's report of recommendations prohibiting hydrofracking.

Supervisor Anderson stated that all information will be compiled and presented to the consultant and various possibilities presented for the Board's decision. Workshops may be necessary.

Resident and Co-Chair of the Citizens Working Committee Jordan Kleinman will be reviewing the Professional Planners Review of Findings and recommendations and preparing another document for the Board's review.

Supervisor Anderson stated that the consultant's recommendation will be compared to the Code so that all recommendations are considered and understood.

## II. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor Anderson at 7:30 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci  
Town Clerk