

RUSH TOWN BOARD
Minutes of May 8, 2013

A regular meeting of the Rush Town Board, County of Monroe, was called to order by Supervisor Richard Anderson at 7:00 PM on May 8, 2013, at the Rush Town Hall, 5977 East Henrietta Road, 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.	-----	Attorney for the Town
	Charles Steinman, Esq.	-----	Attorney for the Town (arriving at 7:30 PM)

OTHERS

PRESENT:	Ansgar Schmid	-----	Resident
	Kathryn Hankins	-----	Resident
	Gerald Kusse	-----	Building Inspector, Resident
	Wendy Kuhn	-----	Resident
	Carol Barnett	-----	Resident
	Jack Mould	-----	Resident
	Dave Sluberski	-----	Resident
	Marianne Rizzo	-----	Resident
	Robert Kraus	-----	Resident
	Pat Kraus	-----	Conservation Board Member, Resident
	Rita McCarthy	-----	Resident
	Don Sweet	-----	Planning Board Member, Resident
	Julia Lederman	-----	Conservation Board Member, Resident
	Joann Deblinger	-----	Resident

I. OPEN FORUM

Supervisor Anderson opened the floor to anyone wishing to address the Town Board. He stated that all comments should be brief and any questions asked would be answered at that time or after research, responded to at a later date. A public hearing on the Right to Farm Law will be held at 7:15 PM.

Resident Carol Barnett, Lyons Road, stated that the Appellate Division unanimously approved the Towns of Dryden and Ullysis rights to uphold their

zoning laws to prohibit natural gas drilling. Home Rule Law will be used to govern land use.

Supervisor Anderson added that additional information regarding that discussion will be addressed by Attorney Charles Steinman.

II. APPROVAL OF MINUTES

RESOLUTION #93-2013

Councilperson Steiner moved to approve the April 24, 2013, Minutes as presented by the Town Clerk. Councilperson Frank seconded the motion.

Roll:

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

III. TRANSFER OF FUNDS

Supervisor Anderson noted that transfers were not necessary.

IV. APPROVAL OF ABSTRACT

RESOLUTION #94-2013

Councilperson Steiner moved Be It Resolved, that having audited all the claims against the funds listed on Abstract 5-1 (#9), for vouchers #430 through #478, be allowed for payment in the amount of \$46,516.36. Councilperson Riepe seconded the motion.

Roll:

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

IV. CORRESPONDENCE

Monroe County Sheriff Department Zone B Report - Supervisor Anderson noted in surrounding towns there continue to be a number of reported break-ins of cars and garages that are unlocked. The TOPS market was also robbed.

Monroe County Department of Transportation – Supervisor Anderson reported that the Monroe County DOT, via Ramsey Construction will be performing rehabilitation on Pinnacle Road from the Rush Henrietta town line to Route 251 and there will be intermittent lane closures from time to time. The Town is renting space at 911 Rush Scottsville Road to Ramsey Construction during the project.

The Town Highway Department will be assisting on the preliminary work. The project is expected to be complete in the fall.

Rush Henrietta School District Safety - Supervisor Anderson received a communication from the R-H School District Safety Committee of which Rick Tracy, Fire Marshall and Disaster Control Coordinator, has been attending. The committee covers residency updates, emergency response and S.W.A.T. training, procedural checks, reenactment drills, food service updates as well as other safety items.

V. REPORTS OF OFFICERS AND COMMITTEES

Town Clerk Bucci reported that next week she would be interviewing 5 candidates for the Gardener position.

Also, while attending the New York State Town Clerk Conference, the following legislative bills being presented were discussed: Opposed were (1) requiring all dog owners to get their dogs micro-chipped; (2) all dogs and owners to successfully complete obedience training; (3) expanding requirements for public notification of public meetings. All of the above create an undue burden. Bills presented that were supported include: (1) option of general construction law to allow on-line publication of public notices; (2) creating a due process that is feasible when requiring consolidating and dissolving government entities; (3) amend the state finance law in relation to transferring funds from one account to the other – in essence transfers that don't pass the "smell test"; (4) amending the DEC fees charged to certain certified sportsman educators and; (5) amend the environmental conservation laws related to active United States armed forces.

There are upcoming changes in the SEQR forms, new DEC licensing system will be rolled out. Other courses attended related to banking/fraud, Trojan horses and electronic imaging and deposits, Real property tax service exemptions including filing requirements associated with the Board of Assessment Review and Minutes and State technology Law.

Town Clerk Bucci has invited the NYS Comptroller's Office to speak at the Monroe County Town Clerk and Tax Receivers and Collectors Association at the Rush Pavilion this Friday. The annual West Fire System testing has been completed, carpets have been cleaned throughout the town hall and the windows will be cleaned shortly.

Under NYS Tax law, notices of unpaid taxes must be sent to all taxpayers who have a balance due on the Town and County tax bill and there is a distinct timeframe that must be adhered to for mailing purposes. Monroe County

Treasury requested that all Tax Collectors and Receivers hold posting to accounts so that the delinquent notices could be printed and mailed. Although we posted accurately, payments were received and posted after letters were printed, thus creating a gap and print-out of delinquent account notices that were actually paid accounts. Many calls were received in the Town Clerk office and all resident accounts were checked for posting accuracy. On behalf of Monroe County Treasury, Town Clerk Bucci apologized for the confusion. Monroe County Treasury will be working on a solution to correct the error for future mailings.

Councilperson Riepe will be attending a presentation on health issues related to hydrofracking at the RIT campus.

Councilperson Steiner attended the Recreational Agricultural Citizens Committee (RACC) meeting and Conservation Board meetings. The RACC has set a tentative Clean-Up date of June 1st with a rain date of June 8th and they asked that an ad be placed in the newsletter. The Committee is temporarily referring to the property as the North Rush Preserve.

Supervisor Anderson stated that an official name of the property at 6565 East River Road will be formed at a later date. Supervisor Anderson met with RACC Chair Jerry Horton regarding the committee concerns of the gate, porta-potty and grass. An ad for the Clean-up will be placed in the Pennysaver and on the town website. All the debris collected should be segmented for the Highway Department to transport.

Councilperson Woolaver had no report.

Councilperson Frank, as liaison, attended the Library Board of Trustees meeting wherein they discussed the 100th year anniversary of the library. A special events committee was established. Councilperson Frank stated that she attended local government conference with Town Clerk Bucci at Houghton College wherein she participated in classes on Public Officers Powers & Duties, Six Flags in Cyber Security, Timing of End of Year Annual Audit by Board and Right to Farm Ordinance mostly focused around southern tier counties.

Code Enforcement Officer Kusse had no report.

Attorney John Mancuso had no report.

RESOLUTION #95-2013

Supervisor Anderson moved that the meeting be interrupted to hold a scheduled public hearing as advertised. All councilpersons present moved in favor of going forward.

PUBLIC HEARING – 7:15 PM - RIGHT TO FARM LAW – Local Law 2 of 2013

Attorney John Mancuso stated that the meeting was to move forward with the Right to Farm Law in accepting public comments which will be received and reviewed by the Town Board. The Board will decide on any changes that need to be made. If amendments are made, a redraft will be done, it will be re-noticed for a second amendment and the Board may then decide on an action. It is also requested that all those speaking state their name and address so that it could be reflected in the record.

Supervisor Anderson added that thus far, written comments have been received.

Town Clerk Bucci stated that following distribution of the proposed Local Law to the Town Board members, notice of said Public Hearing was duly published in the Sentinel and Henrietta Post on April 25, 2013, with the same being posted on the Town Clerk bulletin board and on the town website. Town Clerk Bucci read the following notice:

**NOTICE OF PUBLIC HEARING
PROPOSED ADOPTION of RIGHT TO FARM LAW
LOCAL LAW 2 OF 2013 OF THE TOWN OF RUSH**

PLEASE TAKE NOTICE, a public hearing will be held by the Rush Town Board, at the Town of Rush, 5977 East Henrietta Road, Rush, New York, on the 8th day of May at 7:15 PM, local time, for the purpose of establishing a new ordinance permitting the continuation of agricultural practices, protecting the existence and operation of farms, and encouraging the initiation and expansion of farms and agricultural businesses.

Copies of the proposed Local Law #2 of 2013 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.

April 10, 2013, by Order of the Rush Town Board

Resident Joanne Deblinger, Lyons Road, asked how the Right to Farm Law precipitated and if it currently exists. She further asked if the law is required. In reading points 3B and 4A, she asked if factory farming is going to be allowed and can it be excluded from the law.

Supervisor Anderson stated that the Town applied for and received a Farmland Preservation grant. Once it was submitted by the State, County and other authorities, the reviewer recommended that the town adopt a Right to Farm Law in the Town of Rush to further agriculture. It also serves as a pre-notification that agricultural practices occur within the community. For an example, if a home is built next to a corn field, it would be invalid to state that farming is impeding upon your privacy. The Right to Farm Law does exist in the State of New York and the Planning Board has reviewed a number of templates, recommending the town use the Town of Gorham.

Supervisor Anderson stated that all elements and comments will be reviewed.

Dave Sluberski of Rush West Rush Road commented his concern that that there is currently a great deal of land available that may open up possibilities of a large feeding farm operation. He agreed in protecting the current farming actions but would not enjoy the 24/7 smells associated with large farming operations. The proposed law infers that all complaint responsibility will fall on the Code Enforcement Officer instead of a Mediation Panel. Would having the Code Enforcement Officer handle these situations overburden the officer or create an undue cost. Mr. Sluberski also asked if there was a timeframe in order to submit further comment input into the public hearing.

Supervisor Anderson explained that the Town of Gorham used the Code Enforcement Officer as an administrative procedure. The Town of Rush Law enables the Code Enforcement to collect the data. Enforcement of the action is not part of the duty which provides a streamline to the Town Board. As another recommendation, we are continuing the process of forming a Farmland Advisory Committee.

Attorney Mancuso informed the audience that it is the Board's discretion on how long to keep the public hearing open or to receive post comments. The Board is not required to receive substantive written comments after the closing of the hearing.

RESOLUTION #96-2013

Councilperson Steiner moved to allow substantive written comments related to the public hearing on Right to Farm Law, to be delivered or post-marked to the Town Clerk by May 15, 2013. Councilperson Riepe seconded the motion.

Roll:

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

Code Enforcement Officer Kusse has talked with his colleague at the Town of Gorham who has had success in this streamline approach to the Town Board. The officer is an employee of the town and information would be received by the Town in an expeditious manner versus an Advisory Committee that may take more time in order to inform all members and remedy the situation.

Resident Robert Kraus of Pinnacle Road commented that he was in favor of the Right to Farm Law. The proposed law refers to a mediation process before Court action. Clarification is needed of who appoints a grievance committee and when they fall into the process before it goes to the Town Board. While it is clear that the Code Enforcement Officer and Grievance Committee are not binding, it is silent on what will then occur.

Attorney Mancuso stated that the first version of the Rush Law had a typographical error referring to a Grievance Committee. The corrected version, placed on the website, relates only to the Code Enforcement Officer and then to the Town Board. There is no grievance committee with the Town of Rush Right to Farm Law proposal. Attorney Mancuso will review the proposal in regarding to binding language presented.

In reference to binding language, Attorney Mancuso will consult with NYS Agricultural & Markets.

Resident and Planning Board member Don Sweet, Jeffords Road, stated the reason the Code Enforcement Officer is authorized to gather information regarding disputes is because previous farmland advisory committees have not stayed active. An employee of the town would mediate the matter more expeditiously.

Supervisor Anderson stated that within the recommendation of forming a farming advisory committee, question of member qualifications have been raised, one being a member of the farming community and/or a resident of Rush or solely a property owner. Appropriate members must be selected.

Code Enforcement Officer Kusse spoke of an example presented by his Town of Gorham colleague. Gorham has 7 miles of Canandaigua lakefront with 6 week

residents who complain about farm practices. The Code Officer explained that very little moves into the Court once intervention occurs with the owner.

Resident Gerry Kusse, Rotzel Road, stated the he supports the Right to Farm Law. Being a farmer himself, situations have presented themselves to him personally. The proposed law should take into consideration of a quantitative definition of the career professional farmer versus a residential person with chickens, owning farming equipment, etc. A definition included in the Law would provide parameters for code enforcement.

Resident Joan Deblinger, Wardell Road, stated that all farmers, career or residential should be treated equally. Having horses on her property, all residents should be courteous to their neighbors.

Code Enforcement Officer Kusse explained that not all neighbors are as courteous as others and the Code provides action to be taken.

Resident Maryann Rizzo of Stull Road stated that she would be in favor of adding the prohibition of certain factory farming in the Rush law.

Resident and Planning Board member Don Sweet, Jeffords Road, stated that although there are strict regulations that must be followed for a CAFO (Concentrated Animal Feeding Operation), including not presenting a nuisance to people. NYS Ag and Markets will not allow a town to prohibit certain types of farming activity. However, the Town of Avon has a regulation in its Code allowing owners to have only 1 cow per acre of land.

Resident Kathryn Hankins, Pinnacle Road, agreed with Resident Don Sweet. Mrs. Hankins stated that she wished to restate her comment in the Town Board Minutes of April 24. She agreed with what the attorney stated relating to changes in the Ag & Markets law. She stated that she disagreed that we could not pass legislation that did not conform with Ag & Market laws. Their guidance allows Rush to have its character although the law could be misconstrued by farmers. There are currently a couple hundred acres of land in Rush currently for sale. The question raised was what kind of flexibility is there in developing a town law that protects residents without conflicting with the Ag & Markets Law. Also, could there be a clause in the law protecting current residents that are already adjacent to farms so that they would be ensured and not subjected to conditions that were not present when they purchased their home. The Town should revisit the Farmland Protection Plan for improving the zoning code in order to clarify what the future of Rush would look like. Residents on wells could be affected by farming activities. Pinnacle Road has a development not yet developed. Clauses could also be put into the law to protect farmers that are currently here. Questions should be asked of why are there only 2 towns in this

county that have adopted a Right to Farm Law and are we putting a welcome mat out for CAFO farms. Adopting a Right to Farm Law could scare potential residents away.

Supervisor Anderson commented that there is no hurry in the Right to Farm Law, however, public venues offer an opportunity from the public in order to progress. Supervisor Anderson asked whether or not Mrs. Hankins was suggesting an agricultural zone rather than an agricultural district?

Mrs. Hankins, Pinnacle Road, suggested that certain areas were zoned agriculture, protected and nobody could build in them. Farmers should be engaged. Mrs. Hankins stated that she was not in favor of the Code Enforcement Officer setting any reasonable fees. It would cause problems. Rush should make sure that farms are compatible with residents.

Resident and Planning Board member Don Sweet, Jeffords Road, commented that he supports agricultural zoning, however, many farmers are hesitant in supporting agricultural zoning because it would prohibit development of their land at any future date. Another problem occurs when you are a farmer, not in the agricultural zone and would like to preserve it. That puts those farmers at a disadvantage. Zoning laws in Rush are not easily changed. The Right to Farm Law, more than anything, as part of the Comprehensive Plan is basically a fielded law directing the Town of Rush's support of agriculture, doing whatever possible to keep small farming here. The Right to Farm Law is not meant to infringe upon neighbor's rights.

Resident Kathryn Hankins, Pinnacle Road, stated that compatibility between farmers and residents should be spelled out in the Comprehensive Plan. Other incentives should be provided so that agricultural zones could exist.

Resident Carol Barnett, Lyons Road, stated that she would like to focus on the legality of farming and the possibility of putting conditional clauses into the Right to Farm Law so that residents are also protected.

Supervisor Anderson will consult with additional professionals, with Bob King, locally at Cornell Cooperative Extension and Bob Somers, Ph.D., Agricultural Protection Unit in Albany, regarding legalities and conditional clauses.

Resident Kathryn Hankins, Pinnacle Road, read an article from the State regarding agricultural sound practices. NYS Ag & Markets does take into consideration local law conditions and if there are unreasonable restrictions. Rush is a unique suburb, residential but rural community and its character should

be protected. Having a Right to Farm Law may discourage people from moving into Rush.

Resident Maryann Rizzo, Stull Road, agreed that if clauses can be included in the Law, Rush should also be able to include them.

There were no further comments.

Supervisor Anderson declared the hearing closed at 8:00 PM. All councilpersons were in favor.

VI. OLD BUSINESS

A. Hydrofracking Moratorium Update – Supervisor Anderson offered the floor to Attorney Charles Steiner. Supervisor Anderson and Attorney Steiner met earlier during the week to discuss options in considering the hydrofracking moratorium route. There are essentially 6, 3 of which are active and 3 of which are proactive. Waiting to see what occurs in other towns is an option. The 3rd Department of the Appellate Division upheld the zoning ban for the Town of Dryden which provides more legality in banning possibility. Additional proactive possibilities include (1) A Stand Alone Ban within the Town Code, (Brighton and Perinton have them), prohibited particular activity within the confines of the town. A preference was made in the Citizen's Committee report regarding a zoning ban versus a stand alone ban. After consulting with Mr. Slotje, although his preference was a zoning ban, he agreed that there is no distinction in terms of effectiveness with a stand alone ban versus a zoning ban. A revision of the zoning code could be done. Given that, a stand alone ban is much less cumbersome and quicker to enact than a total overhaul of the town zoning provisions. The Appellate Division decision lends additional authority for a proposition that a town can enact a stand alone ban based on the Home Rule Law. The Appellate decision clearly states ability of a town to regulate this type of activities within its own borders is clearly protected by Municipal Home Rule Law. A caveat is that the Court of Appeals could take a case on behalf of the petitioners to overturn the decision. A referendum on this subject would not be recommended because it is not the most efficient thing to do and it would have to be specific. A moratorium would be more easily challenged.

Supervisor Anderson stated that all documentation presented including Citizen's Report, Larsen Engineer Report, Citizen's Report on the Larsen Report, documented conversation of Attorney Steinman and Attorney Slotje and a listing of the options will be circulated to the Planning, Zoning, Conservation and Town Boards for their feedback. Recommended is a vehicle that best protects the town.

Attorney Steinman stated that if the Board concluded in moving forward with a Stand Alone Ban, the process involved would be identical to adopting a Local Law.

VII. OPEN FORUM –

The floor opened to anyone wishing to address the Town Board.

Resident Carol Barnett, Lyons Road, stated that it was her impression that Attorney Slotje recommended a zoning change and she could not comment until discussing the possibility with Attorney Slotje. Attorney Slotje should still be invited to a Board meeting to answer questions.

Resident Jack Mould, Rush Lima Road, asked what the downside would be to having Attorney Slotje appear at a town board meeting.

Supervisor Anderson stated that there is no downside, however, there is a large amount of data collected in order to make a sound decision.

Resident Kathryn Hankins, Pinnacle Road, stated that on behalf of the Citizens Committee on Hydrofracking, countless hours were provided to research the best practice for the Town of Rush. She stated that although I appreciate, Larsen Engineers and Attorney Steinman, the Committee believed that zoning ban was the best action. Committee members are well educated. She preferred going back to the Committee's recommended decision.

RESOLUTION # 97-2013

There being no further business, Supervisor Anderson moved to adjourn the meeting to Executive Session at 8:15 PM regarding an attorney client privileged matter.

Roll:

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

RESOLUTION #98-2013

Supervisor Anderson, moved to return the meeting to regular session at 8:35 PM and approved by common consent of all councilpersons present.

RUSH TOWN BOARD
May 8, 2013

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned by Supervisor Anderson at 8:45 PM and approved by common consent of all councilpersons present.

Respectively submitted,

Pamela J. Bucci
Town Clerk