RUSH PLANNING BOARD
REGULAR MEETING
MINUTES OF FEBRUARY 21, 2012

A regular meeting of the Rush Planning Board was held on February 21, 2012 at the Rush Town Hall, 5977 East Henrietta Road and was called to order at 7:30 PM.

MEMBERS PRESENT: John Felsen, Chairman
John Morelli
Don Sweet
Rick Wurzer
Scott Strock
Meribeth Palmer, Deputy Town Clerk

OTHERS PRESENT: Councilman Bill Riepe, Town Board Liaison
Gerry Kusse, Code Enforcement Officer
James Kolb, Resident, Business Owner
Bill Stephens, Resident
Jean Stephens, Resident
Carol Barnett, Resident
Rebecca Barnett, Attendee
Tamriq Jenkins, Attendee
Carolee Powers, Resident
Robert Powers, Resident
Julia Lederman, Conservation Board & Resident
Pat Kraus, Conservation Board & Resident
Christopher Giordano, Resident
Beth Hoak, Resident
Marianne Rizzo, Resident
Jordan Kleiman, Resident
Kathryn Hankins, Resident

Chairman Felsen opened the meeting by welcoming all to the meeting. Chairman Felsen announced that the order of items on the agenda would be changed to facilitate the meeting.

APPROVAL OF MINUTES:

The Minutes of January 17, 2012 were reviewed.

Don Sweet made a motion to accept the minutes of January 17, 2012 as amended.

Rick Wurzer seconded the motion and the Board members polled:

Roll:	John Felsen	aye
	John Morelli	aye

Don Sweet	aye	
Rick Wurzer	aye	
Scott Strock	aye	carried.

PRESENTATION:

The Rush Citizens Concerned About Hydrofracking group (RCCH) appeared before the Planning Board to give a presentation regarding their request for a hydrofracking moratorium.

Spokesman for the group Jordan Kleiman submitted an outline of discussion items. Mr. Kleiman is a Rush resident and a professor at SUNY Geneseo where his focus is on the environment in modern United States. Mr. Kleiman has been following the high volume slick water also known as hydrofracking. As a result of his interest and studies Mr. Kleiman has concluded that hydrofracking poses a number of serious risks to the environmental integrity, public health and to the economy of New York.

The goal of the RCCH is to help educate Rush citizens about the risks and to request the Town Council to enact a one year moratorium. The RCCH is not asking the town to decide whether hydrofracking is good or bad, rather simply protect the community from the risks with a moratorium.

Mr. Kleiman addressed the following questions and topics:

<u>Why do we need a moratorium on hydrofracking?</u>

- The regulatory vacuum at the state and federal level that have left municipalities vulnerable to heavy industrial activity. Regulatory short comings, particularly the willingness of the governor to allow hydrofracking before the EPA completes its nationwide study of the impact of hydrofracking on drinking water. Preliminary results are not due out until later this year and final results are due in 2014.

- Failure of the Federal and New York State (NYS) governments to conduct other studies of similar impact associated with hydrofracking such as air pollution, dramatic spikes in ground level o-zone, soil contamination, educed seismicity, none of which have been studied in any depth.

- Failure of the Federal and NYS governments to conduct a public health analysis of hydrofracking or to propose a viable waste disposal plant for the toxic flow back and production grinds.

- The process of hydrofracking by the oil and gas industry has been exempted from a number of regulatory statutes, most famously the Safe Drinking Water Act through the Halliburton loophole in 2005. Additional exemptions from statutes include the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response Compensation and

Liability Act(AKA Super Fund), National Environmental Policy Act, Emergency Planning and Community Right to Know Act.

To date 70 plus municipalities have tried to protect themselves under home rule by passing a ban or moratoriums too. In addition the law suit against the Town of Dryden by Anschutz was decided in favor of the town.

A moratorium would allow the town sufficient time to access potential impact of hydrofracking in Rush and to adjust our zoning code and master plan to ensure shale gas development is identified as a heavy industrial activity, thus not threatening the health and well-being of town residents, the town's physical infrastructure, financial stability, natural resources, and the town's rural character.

A moratorium would also provide time for further scientific analysis of the risks of hydrofracking and if green lighted the moratorium allows us to see what happens in other NYS communities.

<u>Why do we need to pass a moratorium quickly?</u>

- NYS de facto moratorium will end as soon as the Department of Environmental Conservation (DEC) is done addressing all the public comments posed to its environmental impact board, Supplemental Generic Environmental Impact Statement (SGEIS) is the document in question. At the end of the process the state could possibly issue permits to drill.

- Once the permitting process begins it will be difficult and legally risky to adjust the code in the interest of the town. Leased land will be seen as a vested interest with a monetary goal.

<u>Why Rush is vulnerable to the intrusion of the large scale heavy industrial activity associated with hydrofracking?</u>

- Rush sits on top of the Utica shale formation. Utica shale is currently being drilled in Ohio by the oil industry.

- The RCCH group feels that Rush will be attractive to the gas and oil industry because of the vast amount of open land, farm land, water resources, and closed proximity to an important regional city.

- Mr. Kleiman stated that the oil and gas association of New York has submitted through lobbyist Hinman-Straub a request that the Rush Town Board reject the request for a moratorium.

RCCH concerns over specific impacts.

- Hydrofracking can potentially expose residents to a range of toxic chemicals including known carcinogens, neurotoxins and disruptors from possible surface events such as spills, explosions, storm educed overflowing, waste pits, evaporation, condensation. Subsurface events could include compromised well casings, cement failures, fractures to abandoned wells, fluid migration. Residents could be affected by elevations of ground level o-zones that can lead to many repertory problems.

- More than 225 homes rely on well water. Hydrofracking could cause water withdrawals. Rush has many creeks and borders a large river, all potentially could be effected by a spill, contaminate water and permanently damage water supplies.

- Economic impacts include threats to property values, mortgages, the potential increase of taxes, burdens placed on fire police and emergency responders. Managements of accidents, spills, fire and explosions. Increase in earth quakes, social services, diseases due to exposure.

- Quality of life impacts include a threat to the rural character of Rush. Agricultural impacts include low fresh water supplies that farms need to survive, elevated o-zone threatening crop production, chemical spills threaten livestock, and trucking costs could rise.

Chairman Felsen asked the RCCH group why they are not asking for a complete ban rather than a moratorium. Chairman Felsen stated that he has not heard of any oil or gas companies buying leases here in Rush. If Utica Shale can be developed now why aren't we seeing oil and gas companies looking to this area?

Mr. Klieman's thoughts are the gas and oil companies probably go for the most accessible reserves first, those would be areas with Marcellus Shale.

Mr. Kleiman stated that the political culture of the town was considered when making the decision of a moratorium opposed to a ban. There also needs to be further discussion regarding bans and a moratorium buys more time.

Resident Christopher Giordano restated that a moratorium will allow more history to form prior to a decision.

Resident Katherine Hankins stated that there may be one company in Avon that may have expressed interest in this area. The other risk for Rush is the hydrofracking fluids and where they could potentially be deposited. Ms. Hankins received a recent email from her home town of Auburn that stated Auburn has the facilities to treat hydrofracking waste water. Others places have to store the water. Many counties to the

south want to have hydrofracking. Ms. Hankins feels the close proximity could lead oil and gas companies to Rush.

Mr. Kleiman stated that the article from Hinman-Straub is not from the law firm, it is from the lobbying arm of the firm and they use the firm's letterhead as an intimidation tactic. The first few claims are misleading.

Mr. Morelli stated that he is in favor of being proactive and taking precautionary approach to unknown risks. Mr. Morelli is in favor of a moratorium. However, the Rush Town Code states that extraction is not permitted without a special permit. Special permits are granted by the Planning Board and require that the Planning Board make sure that conditions are such that they safeguard the town and public health and the code identifies these items in depth. The code also states that the Planning Board would only issue one of these permits if the proposed use is necessary or desirable to provide a service or facility which will contribute to the general well-being of the neighborhood or community, and if it would not endanger or intend to endanger the public health, safety, morals or general well fair of the community. The code also goes on to state that the board must consider fire hazards, odors, smoke, fumes, lights, noise, character of the neighborhood, nature of the premises, location and that the proposed use will be in harmony with the probable future development of the neighborhood and will not discourage the appropriate development and use of adjacent lands and building or impair the value thereof. Therefore if the Planning Board determines that a proposed use does not comply with any of the requirements in the chapter it shall deny the application.

Mr. Morelli posed the question: Doesn't the existing code already serve as protection to the town?

Resident Kathryn Hankins stated "I have done extensive land use for a lake property town that has both lake and agriculture". Ms. Hankins cautions against the special use permit when NYS is moving forward to allowing permits. Ms. Hankins informed the group that the oil and gas industry is managed and monitored by NYS rather than the towns. So the towns have to look at it from a heavy industry base and some of our residential areas actually have over 40 acres. Ms. Hankins stated that there is a 40 acre requirement for a well pad. In NYS we have the capability of having the wells go under other people's yards. Ms. Hankins stated to the Planning Board that being in charge of special permits may not be enough, that an applicant could go to the zoning board to ask for a variance because they have leased their land. Ms. Hankins stated that the code needs to ban hydrofracking from the whole town not just residential areas and that we should borrow language from other town code to update our code and use legal expertise. Mr. Hankins stated that other ordinances and bans should be put in place for things such as heavy trucks that might come through town.

Chairman Felsen stated the most of the town is residential and all of the farm land in Rush is in a residential zone.

Mr. Morelli stated that the section of the code that applies to extracting is a very strong ordinance and holds weight.

Resident Carol Barnett stated that other towns may have explicit protective language in their codes as well but there may be looking for extra levels of protection.

Ms. Hankins stated that this is an opportunity for the entire town to weigh in on the topic.

Chairman Felsen stated to the audience that he wished everyone in the audience would have participated in the Farmland Protection Plan, that it is almost near completion, and that it has had very little resident participation.

Resident Mary Ann Rizzo informed the board that the Town of Mendon just passed a one year moratorium.

INFORMAL DISCUSSION:

James Kolb is the owner of Colby's Ice cream and bake Shop. Mr. Kolb appeared before the Board to discuss changes he would like to make to the existing retail space located at 7272 West Henrietta Road. Mr. Kolb installed decking on the east side of the building last year and is looking to install an awning over the patio. There was a concern that the decking and awning encroach into the required fire lane area. Mr. Kolb stated that the Fire Marshall has viewed the site. Mr. Kolb stated that there appeared to be adequate space for the decking without interfering with the fire lane. Mr. Kolb submitted sample images of the proposed awning and layout of the area. The awning would consist of tubular framing covered with awning fabric. Mr. Kolb would also like to install a small storage shed.

Chairman Felsen asked how much additional seating would be provided. Mr. Kolb stated that he estimated 25-30 seats. Chairman Felsen stated concerns regarding the current septic system and asked if there are plans to increase the systems capacity. Mr. Kolb stated that should the need arise they would expand the system. To date there have not been any septic problems and there were a lot of patrons last summer. Mr. Kolb informed the Board that very few people tend to use the bathroom. Mr. Felsen asked if there is increase in customer base would there be an increase in kitchen waste water. Mr. Kolb stated that they will not be increasing the menu and the cooking is done off site. Because the septic is currently tied into the Steven's house system the additional waste water may require a system expansion. It was noted that the original plans included a separate septic system.

Chairman Felsen inquired about parking. Mr. Kolb felt that the current lot is sufficient. There is also concerns regarding the current parking and the possibility that it could hinder the ability of emergency vehicles to access the fire lane on the east side? Chairman Felsen stated that parking would have to be restricted with signage to keep a clear path to the fire lane.

The Planning Board would like Mr. Kolb to submit a sketch of the parking area and the accessible fire lane area to the Rush Fire Marshall for his approval.

BOARD BUSINESS:

After the review of Rush Town Code 120-7B910) and 120-69D(1) by The Planning Board it was determined that without further information regarding hydrofracking and associated activities they would be unable to make a favorable decision in the case of any future applications before them requesting special permits for hydraulic extracting. Therefore the following motion was made.

John Morelli made a motion that the Planning Board having reviewed information presented by the Town Board and Rush residents, recommend a moratorium on hydrofracking and associated activities.

Don Sweet seconded the motion and the Board Members polled:

Roll:	John Felsen	aye	
	John Morelli	aye	
	Don Sweet	aye	
	Rick Wurzer	aye	
	Scott Strock	aye	carried.

The Planning Board discussed the Town Attorney's recommendations and/or addition for the Site Plan and Subdivision Application.

There will be an additional line added to the application for the owner to sign giving authorization for an agent to act on their behalf. Application fees have also been added to the application. Road construction and design criteria were also discussed. If an application comes forward with road construction as part of the plan, Deputy Clerk Palmer will forward this section of the code to the applicant rather than include it with all applications.

The application can be put on line for people to print out as needed.

With no further business, a motion was made by Don Sweet and agreed by common consent that the meeting be adjourned at 8:55 PM.

Respectfully Submitted,

Meribeth Palmer
Deputy Town Clerk