

**RUSH ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES OF FEBRUARY 9, 2012**

A regular meeting of the Rush Zoning Board of Appeals was held on January 12, 2012 at the Rush Town Hall, 5977 East Henrietta Road, and was called to order at 7:00 PM.

**BOARD MEMBERS PRESENT:** Don Van Lare, Chairman  
Robert Weiler  
Amber Corbin  
Garry Koppers  
Meribeth Palmer, Deputy Town Clerk  
Lisa Sluberski, Town Board Liaison

**EXCUSED:** Kelly Pruden

**OTHERS:** Mark Hasman, Attendee  
John Lombardo, Attendee  
Gerry Kusse, Code Enforcement Officer, Resident  
Pat Kraus, Conservation Board, Resident  
Julia Lederman, Conservation Board, Resident  
Beth Hoak, Resident  
Marianne Rizzo, Resident  
Carol Barnett, Resident  
Ansgar Schmid, Resident  
Svetlana Lukishova, Resident

**WORKSHOP:**

**Application 2012-01Z** by Mark Hasman and John Lombardo requesting sign variances for 3 proposed signs. Property is located at 7283 West Henrietta Road. Signs do not comply with 120-27 of the Rush Town Code. Property is zoned commercial.

Chairman Van Lare stated that according to the new sign ordinance the above commercial property is entitled to 1 wall sign and 1 freestanding sign. Roof signs are not permitted and require variances. Directional signs such as the existing "service" sign is limited to 4 square feet and a height of 10 feet.

Mr. Hasman and Mr. Lombardo stated that the service sign is currently in the same or original location and is 5.8 square feet in size. If the service sign remains in the current location it will also require a variance.

Chairman Van Lare stated that the Dorschel Automotive roof sign is approximately 98 square feet and the east and west signs are 79 square feet.

Mr. Hasman and Mr. Lombardo stated that the three proposed Exit 11 Auto signs are 52 square feet each in size and significantly smaller than the current Dorschel Automotive signs.

The Board determined that the roof sign will be considered a free standing sign and a variance will be needed for the location. 1 wall sign is allowable, therefore, a variance for the second wall sign will be required. In addition a variance will be required for the size and height of the directional service sign.

Chairman Van Lare stated that when the town was revising the sign ordinance, he mentioned that consideration should be given to properties that border on more than one major road. In Mr. Hasman and Mr. Lombardo's case the property borders two major roads.

One of the Zoning Board members will contact Mr. Hasman and Mr. Lombardo to make arrangements to view the property and signs together.

Application 2012-01Z has been scheduled for a public hearing on March 8, 2012.

**BOARD DISCUSSION: request by the Town Supervisor Richard Anderson to review hydrofracking documents.**

The Zoning Board was asked to review several documents provided by the Town and the Rush Citizens Concerned about Hydrofracking Group (RCCA). Board members comments can be placed on the record now or can be forwarded directly to the Town Supervisor.

Chairman Van Lare provided a resolution to the Board for discussion as follows:

Since (1) the New York State Department of Environmental Conservation has not yet issued a final report on well permit issuance for horizontal drilling and high-volume hydraulic fracturing, and (2) this Board has not received a report on this subject prepared by the Town Attorney mentioned in the Rush Town Supervisor's memorandum of January 25, 2012, and since the Town of Rush has a temporary protection from mining operations under section 120-7B (10) and 120-18D of the present town code.

Therefore, be it resolved that the Rush Zoning Board of Appeals will not make a recommendation to the Rush Town Supervisor concerning a moratorium at this time.

**Board discussion of the motion:**

Chairman Van Lare stated that at this point he does not feel that there is enough information to make a decision.

Robert Weiler stated that he is one of the few that is in favor of hydrofracking. Mr. Weiler feels that economic issues and government controls need to be addressed because

hydrofracking is going to occur. The issue then becomes what kind of controls and regulations will be instituted. Mr. Weiler stated that Rush is in an area where there is no Marcellus shale. Utica shale is 3 to 5 thousand feet below the surface and Rush is not a high volume oil area. Mr. Weiler is very doubtful that hydrofracking would be economical here, this will not be determined for several years. Therefore Mr. Weiler does not feel a moratorium is necessary. In addition New York State law prohibits towns from enacting moratoriums and there are currently law suits against towns for this reason. Mr. Weiler agrees with the proposed motion.

Amber Corbin stated that Rush is falling behind what the other towns and villages are doing and it is necessary to err on the side of caution to make sure the town is protected. Mrs. Corbin is also interested in knowing which towns in our area have currently passed moratoriums. Mrs. Corbin noted that it is important to look at science not opinions and not to let hydrofracking companies or their representatives intimidate or pressure the town. Mrs. Corbin would like to wait for the Town Attorney's comments/response regarding the matter. Therefore, Mrs. Corbin is in favor of a moratorium.

Garry Koppers agrees with Mrs. Corbin also that it is important to be cautious until more substantial data can be provided.

Robert Weiler seconded the motion.

The Board was polled on the Motion.

Roll:	Don Van Lare	aye	
	Robert Weiler	aye	
	Amber Corbin	aye	
	Garry Koppers	aye	carried.

**Chairman Van Lare opened the meeting to the public for brief comments.**

Carol Barnett stated that the Town Board is asking for responses from ancillary boards by February 22<sup>nd</sup> to presumably put forward a moratorium draft and schedule a public hearing.

Chairman Van Lare reminded Ms. Barnett that the Zoning Board's motion is not supporting or opposing the moratorium.

Chairman Van Lare also stated that the Zoning Board is in an unusual spot by being asked to advise on the writing of laws and then possibly having to enforce those laws as a judicial body.

Carol Barnett disagreed with Mr. Weiler on the ability of towns to pass moratoriums.

Beth Hoak informed the Board that one reason that RCCAH wants a moratorium is that the Department of Environmental Conservation (DEC) study is based only on one drill pad site and they will not have any cumulative data.

Mary Ann Rizzo stated that she has read about 2400 cases of well contamination across the United States. There is also a possibility that the Governor of New York will allow permits for slick water, high volume hydrofracking. A moratorium will buy time so that the town can gather further information.

Carol Barnett further added that once permitting begins in New York State (NYS) land owners will be looking to make money by hydrofracking and this will enable land owners to obtain permits more easily. Mrs. Barnett also feels that due to oil company pressures, NYS will act quickly rather than taking time to look into all aspects hydrofracking. Mrs. Barnett pointed out that in an article released within the last two days Joseph Martens Commissioner of the DEC states that it's conceivable a handful of permits could be issued this year for high-volume hydraulic fracturing, but he said a final decision is months, not years away. This is why Mrs. Barnett feels a moratorium is imperative.

Julia Lederman read into the record the Conservation Board's recommendation to Supervisor Anderson.

Chairman Van Lare stated that this is currently not a public hearing forum and the RCCAH are welcome to be placed on the agenda for March.

The RCCAH has requested to be placed on the March 8<sup>th</sup> Zoning Board agenda for a brief presentation.

Carol Barnett submitted additional hydrofracking information to the Zoning Board.

#### **BOARD BUSINESS:**

Gerry Kusse Code Enforcement Officer had nothing to report.

Councilwoman Lisa Sluberski reported that the Town is required to submit any proposed moratorium/plan to Monroe County Department of Planning and Development for review.

Don Van Lare entered into the minutes that John and Jeanne Morelli have withdrawn Zoning Application 2011-11Z.

#### **Application Assignments:**

Amber Corbin have been assigned to application 2012-01Z by Mark Hasman and John Lombardo.

**Discussion of state and local parcel coding:**

Parcel zoning descriptions on the Monroe County web site do not always match the Town's zoning district. Amber Corbin met with Town of Rush Assessor Dan Stanford and has submitted a report to the board to help clarify the parcel coding process.

The Town Assessor looks at each property for what it is currently being used for. He does not look at each property as its highest or best use and he does not look at the town's zoning maps. For example a house that is in the Town's commercial zone may appear on the Monroe County web site as residential because that is its current use.

The Assessor has access to "property class" and "zoning classification codes". Property classes are derived from Office of Real Property Services (ORPS) software used by the state and town. "Property class" is input by Monroe County, however, the Assessor can change this field if necessary. A list of suggested "zoning classification codes" have been provided by ORPS for municipalities to use if they so choose. The Assessor has the ability to add a "zoning classification code" or leave it blank. Removing the ORPS "zoning classification code" in some cases may eliminate some zoning confusion when looking at parcels on the Monroe County web site. In addition all acreage posted on the Monroe County web site comes from the Monroe County Tax Mapping Department.

**APPROVAL OF MINUTES:** January 12, 2012

Don Van Lare made a motion to approve the Minutes of January 12, 2012.

Robert Weiler seconded the motion and the Board Members polled.

Roll:	Don Van Lare	aye	
	Robert Weiler	aye	
	Amber Corbin	aye	
	Garry Koppers	aye	carried.

With no further business, a motion was made by Don Van Lare and agreed by common consent that the meeting be adjourned at 7:50 PM.

Respectfully Submitted,

Meribeth Palmer  
Deputy Town Clerk