Town of DeWitt Local Law #2 of the year 2013

Be it enacted by the Town Board of the Town of DeWitt as follows:

Section 1. Title

This local law shall be referred to as “Natural Gas and Oil Extraction and/or Exploration”. For reference, this is a Local Law which creates a new Chapter 114 of the Code of the Town of DeWitt.

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of DeWitt to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of DeWitt, after a significant study of the issues relating to natural gas and oil extraction and/or exploration, adopts legislation which prohibits within the Town of DeWitt such activity and processes, as well as any activity associated therewith or intending to support such activity and process including the establishment, implementation, placement, or construction of such process or activity in the Town of DeWitt.

Section 3. Legislative Findings

Pursuant to its legislative powers and the Comprehensive Plan for the Town 2002, in 2010, the Town of DeWitt Town Board enacted a “Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt”. The moratorium pursuant to that legislation expired, was renewed in 2011, and has subsequently expired.

During the period in which the moratorium was in place, and thereafter, this controversial issue was addressed by the Town. Members of the Town Board have followed the legislative activities of the State of New York Department of Environmental Conservation and have gathered relevant information, have heard from parties familiar with the issues involving the process known as hydrofracking, as well as the processes and activities of natural gas and oil extraction and/or exploration, and they have studied this issue in a thoughtful way. As a result, the Town believes that the commercial extraction of natural gas in the suburban environment of the Town of DeWitt poses a significant threat to the health, safety and welfare of the residents and neighborhoods within the Town. Moreover, the Town finds that the widespread environmental and human health impacts have resulted from commercial gas extraction in other areas should be avoided in the Town.

Although there are various sections of the Town of DeWitt Code which regulate some issues relating to energy production as well the export of energy off site, these regulations may not be sufficient cover some activities and issues surrounding natural
gas exploration and extraction.

Section 4. Table of Contents

The Table of Contents of the Code of the Town of DeWitt shall be modified to add the following: "Chapter 114, Natural Gas and Oil Excavation and/or Exploration."

Section 5.

The following shall be added to the Code of the Town of DeWitt as Chapter 114, Natural Gas and Oil Excavation and/or Exploration

See Exhibit A attached hereto.

Section 6.

The provisions of this Local Law (and Exhibit A thereto) are severable. The invalidity of any provision of this Local law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 7.

This local law shall take effect immediately upon filing in the Office of the Secretary of State.

EXHIBIT A TO LOCAL LAW #2 OF 2013

Chapter 114. GAS AND OIL EXPLORATION

§114-1 Purpose
§114-2 Expressly Prohibited Uses
§114-3 Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes.
§114-4 No Application To Customary Local Distribution Lines.
§114-5 Definitions
§114-6 Violations and Penalties
§114-7 Severability; Repealer
§ 114-1. Purpose.
The Town of DeWitt believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. Allowing one or more of the explicitly prohibited uses described in § 114-2 to be conducted in the Town of DeWitt would likely be hazardous to the public health, safety and welfare of the inhabitants of the Town, causing air pollution, dust, odors, and excessive truck traffic to and from the sites of such uses. Furthermore, the high costs associated with the disposal of natural gas and/or petroleum extraction, exploration or production wastes (as defined in § 114-5) have in other localities resulted and could, in our Town, result in such material being deposited along roadways, in vacant lots, or business sites or in other unauthorized places. The purpose of this chapter is to avoid the adverse impacts from these prohibited uses and to protect the health, safety and welfare of the Town residents.

§ 114-2. Explicitly prohibited uses.
A. The following uses and activities (being respectively defined in § 114-5 below of this Chapter 114) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:
   (1) Land application facility;
   (2) Natural gas and/or petroleum exploration activities;
   (3) Natural gas and/or petroleum extraction activities;
   (4) Natural gas and/or petroleum extraction, exploration or production wastes disposal/storage facility;
   (5) Natural gas and/or petroleum extraction, exploration or production wastes dump;
   (6) Natural gas compression facility;
   (7) Natural gas processing facility;
   (8) Non-regulated pipelines;
   (9) Underground injection; and
   (10) Underground natural gas storage.
B. Any condition caused or permitted to exist in violation of § 114-2 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance.

§ 114-3. Prohibition against natural gas and/or petroleum extraction, exploration or production wastes.
A. The Town of DeWitt hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this chapter complies with at least the minimum applicable requirements set forth in such statute, and the
rules and regulations promulgated pursuant to said Article 27.

B. It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any natural gas and/or petroleum extraction, exploration or production wastes, except for methane gas which is produced at a permitted landfill within the Town of DeWitt.

§ 114-4. No application to customary local distribution lines.

The prohibitions set forth above in this Chapter 114 are not intended, and shall not be construed, to prevent or prohibit:

A. The right to use roadways in commerce or otherwise for travel;

B. The transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or

C. The incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal agriculture, residential, business, commercial, and other uses within the Town.

§ 114-5. Definitions.

For purposes of this chapter, the following terms shall have the meanings respectively set forth below:

AGRICULTURAL USE

The use of the land for agricultural purposes, including, but not limited to, dairying, pasturage, truck farms or nurseries, greenhouses, horticulture, viticulture and apiaries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.

BELOW-REGULATORY CONCERN

Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR § 20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

GATHERING LINE or PRODUCTION LINE

Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act, and which does not meet the definition of a "major utility transmission facility" under the Public Service Law of New York, Article 7, § 120(2)(b).
INJECTION WELL
A bored, drilled or driven shaft or a dug hole through which fluids (which may, or may not include semisolids) are injected into the subsurface.

LAND APPLICATION FACILITY
A site where any natural gas and/or petroleum extraction, exploration or production wastes are applied to the soil surface, or injected into the upper layer of the soil.

NATURAL GAS
Methane and any gaseous substance, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons, excluding any gas produced by a permitted landfill.

NATURAL GAS AND/OR PETROLEUM EXPLORATION ACTIVITIES
Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons, including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES
The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing, including hydraulic fracturing or hydrofracturing, excluding any gas produced by a permitted landfill.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES
A. Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and whether or not such substances are generally characterized as waste:

(1) Below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons;

(2) Natural gas or petroleum drilling fluids;

(3) Natural gas or petroleum exploration, drilling, production or processing wastes;

(4) Natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semiliquid
material);
(5) Any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum;
(6) Soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum;
(7) Drill cuttings from natural gas or petroleum wells; or
(8) Any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum.
B. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 CFR § 261.4(b).
C. The definition of natural gas and/or petroleum extraction, exploration or production wastes does not include:
(1) Recognizable and non-recognizable food wastes; or
(2) Waste generated by agriculture use.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY

Any of the following:
A. Tanks of any construction (metal, fiberglass, concrete, etc.);
B. Impoundments;
C. Pits;
D. Evaporation ponds; or
E. Other facilities, in any case used for the storage or treatment of natural gas and/or petroleum extraction, exploration or production wastes; that:
(1) Are being held for initial use;
(2) Have been used and are being held for subsequent reuse or recycling;
(3) Are being held for treatment; or
(4) Are being held for storage.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES DUMP

Land upon which natural gas and/or petroleum extraction, exploration or production wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded.

NATURAL GAS COMPRESSION FACILITY

Those facilities or combination of facilities that move natural gas or oil from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and
tanks for the storage of waste liquids and hydrocarbon liquids.

NATURAL GAS PROCESSING FACILITY

Those facilities that separate and recover natural gas liquids (NGLs) and/or other nonmethane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

NONREGULATED PIPELINES

Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

PIPELINE

All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment, such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment) whether or not laid in public or private easement or private right-of-way within the Town. This term includes, without limitation, gathering lines, production lines, and transmission lines.

RADIOACTIVE MATERIAL

Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is radioactive material for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the New York State Department of Labor, the United States Nuclear Regulatory Commission, the United States Environmental Protection Agency, the United States Department of Energy, the United States Department of Transportation, or any other regulatory agency.

RADIATION

The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

SUBSURFACE

Below the surface of the earth, or of a body of water, as the context may require.

TRANSMISSION LINE

A pipeline that transports petroleum, natural gas, or water to end users as a public utility and which is subject to regulation either by:

A. The Federal Energy Regulatory Commission's jurisdiction under Section 1(b) of the Natural Gas Act; or

B. As a major utility transmission facility under the Public Service Law of New York,
Article 7, § 120(2)(b).

UNDERGROUND INJECTION

Subsurface emplacement of natural gas and/or petroleum extraction, exploration or production wastes by or into an injection well.

UNDERGROUND NATURAL GAS STORAGE

Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

§ 114-6. Violations and Penalties.

A. Violations. Any prohibited activity that is commenced or is conducted contrary to this chapter may be restrained by injunction or otherwise abated in a manner provided by law.

B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be guilty of a violation punishable by a fine not exceeding $500 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than $500 nor more than $700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than $700 nor more than $1,000 or imprisonment for a period not to exceed six months, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.

§ 114-7. Severability; repealer.

A. The provisions of this article are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this article is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of this article.

B. All inconsistent provisions of prior laws adopted by the Town of DeWitt are hereby repealed, but only to the extent necessary to remedy the inconsistency.

Enacted by the Town Board of Dewitt on May 13, 2013
Section 1. Title
This Local Law shall be referred to as the "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt".

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of DeWitt to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of DeWitt declares a twelve month moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process including the establishment, implementation, placement, or construction of such process or activity in the Town of DeWitt.

Section 3. Legislative Findings

The Town of DeWitt pursuant to the Comprehensive Plan for the Town in the year 2002, adopted Local Law Number 6 of the year 2007. Thereafter, several additional amendments to Code were studied by the Zoning Update Committee appointed by the Town Board, and modifications to the Code were made after 2007 by the Town Board. The issue of hydrofracking and how it should be regulated by the Town is ripe for review for the Zoning Update Committee so that the Town Board can make an informed decision as to legislation.

This Board further finds that there are various sections of the Town of DeWitt Code which regulate some issues relating to energy production as well the export of energy off site. Hydrofracking presents issues which may relate to the regulations already in place, or may require additional regulation in the Code.

Further, the State of New York Department of Environmental Conservation (DEC) is in the process of actively studying the environmental impacts of hydrofracking and possibly, with the State of New York, regulating same. This Board is desirous of utilizing this moratorium period to review any proposed such legislation and to determine the extent to which such legislation will play a role in the regulation of hydrofracking by the Town.

This moratorium is intended to provide the time for study of this issue so that comprehensive and fair legislation can be crafted to address these issue. The Town Board also determines that while the review of these regulations is being undertaken, and in consideration of the significant
environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

Section 4. Scope of Controls

A. During the effective period of this Local Law:

1. The Town Board of the Town of DeWitt shall not grant any approvals that would have as the result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

2. The Town Planning board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

3. The Town Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

4. The Department of Development and Operations shall not issue any permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such
process including the establishment or implementation of such process or activity in the Town of DeWitt.

B. The Town Board of the Town of DeWitt reserves the right to direct the Commissioner of Development and Operations to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 5. No consideration of New Application

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

Section 6. Term

This moratorium imposed by this Local Law shall be in effect for a period of 180 days from the effective date of this local law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

Section 7. Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town for violations; and

B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or reconstruction that may have taken place in violation of this Local Law.
Section 8. Validity

The invalidity of any provision of this Local law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 9. Hardship

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 10. Definitions

A. The terms Hydraulic fracturing and/or Hydrofracking shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a
gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well the breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.

B. The term “Town” when used in this Local Law shall mean the Town of DeWitt.

C. The terms “Town Board”, “Planning Board” and “Zoning Board of Appeals” when used in this Local Law shall refer to the appropriate boards established in the Town of DeWitt.

D. The term “Development and Operations” when used in this Local Law shall refer to the Department of Development and Operations of the Town of DeWitt as established by Local Law No. 1 of the year 1983 of the town of DeWitt and set forth in Chapter 15 of the Code of the Town of DeWitt.

11. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.
May 23, 2011

Following a discussion of the need for regulation of the practice, the Supervisor closed the hearing.

Motion by Councilor Baker, seconded by Councilor Scruton.

Local Law 2011-6
Local Law Imposing a Moratorium on the Activity Known as Hydraulic Fracturing and/or Hydrofracking in the Town of Dewitt 2011

Section 1. Title

This Local Law shall be referred to as the "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt 2011".

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of DeWitt to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of DeWitt declares a six-month moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process including the establishment, implementation, placement, or construction of such process or activity in the Town of DeWitt.

Section 3. Legislative Findings

Pursuant to its legislative powers and the Comprehensive Plan for the Town 2002, in 2010, the Town of DeWitt Town Board enacted a “Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt”. The moratorium pursuant to that legislation has now expired. However, the issues which led to the decision to enact such moratorium have not abated, and the issues which led to the reasons of enacting the moratorium have also not ripened to the point that the town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue.

This Board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of DeWitt and also the State of New York is an ongoing matter of great concern and controversy throughout the State.

As of this date, there is an Executive Order put in place by the former Governor of the State of New York which has suspended permits for hydrofracking in the State of New York. It is currently unknown as to the exact date that Order may be lifted. And, it is not yet clear as to what safeguards are anticipated to be put in place by the NYDEC and/or NY Legislature to protect New York waters, properties and people, nor exactly how long such regulation may take to enact. Accordingly, it is difficult for the Town to determine the type or extent of legislation that would be necessary, required or permitted, until well after the State clarifies its position. Without preliminary legislation in place by the State, the drafting of comprehensive legislation in the Town
at this time would be unnecessarily time consuming with the possibility of some or all of it being rendered moot.

Although there are various sections of the Town of DeWitt Code which regulate some issues relating to energy production as well the export of energy off site, these regulations may not be sufficient cover some hydrofracking issues.

This Board is desirous of utilizing this extended moratorium period to continue to monitor and review state legislation, legislation of other towns and municipalities relating to this subject and gathering the continuing mass of information that is becoming available on this subject; including possible legislative language for towns as suggested by experts in the field. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.

At this point it is important to note that there are no applications for hydrofracking pending in the Town, nor do there appear to be any potential applicants. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

Section 4. Scope of Controls

A. During the effective period of this Local Law:

1. The Town Board of the Town of DeWitt shall not grant any approvals that would have as the result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

2. The Town Planning board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

3. The Town Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

4. The Department of Development and Operations shall not issue any permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.
B. The Town Board of the Town of DeWitt reserves the right to direct the Commissioner of Development and Operations to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 5. No consideration of New Application

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

Section 6. Term

This moratorium imposed by this Local Law shall be in effect for a period of 180 days from the effective date of this local law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

Section 7. Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town for violations; and

B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or reconstruction that may have taken place in violation of this Local Law.

Section 8. Validity

The invalidity of any provision of this Local law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 9. Hardship

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said Public Hearing, render its decision either granting or denying the application for a variation from the
strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 10. Definitions

A. The terms Hydraulic fracturing and/or Hydrofracking shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well the breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.

B. The term “Town” when used in this Local Law shall mean the Town of DeWitt.

C. The terms “Town Board”, “Planning Board” and “Zoning Board of Appeals” when used in this Local Law shall refer to the appropriate boards established in the Town of DeWitt.

D. The term “Development and Operations” when used in this Local Law shall refer to the Department of Development and Operations of the Town of DeWitt as established by Local Law No. 1 of the year 1983 of the town of DeWitt and set forth in Chapter 15 of the Code of the Town of DeWitt.

11. Effective Date

This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

Upon the roll being called, the vote was as follows:

Supervisor Michalenko Aye Councilor Mannion Aye
Councilor Albanese Aye Councilor Schultz Aye
Councilor Andrews Aye Councilor Scruton Aye
Councilor Baker Aye

The vote being 7 in favor and none opposed, the local law was enacted.

EAVES: CONTRACTS

Supervisor Michalenko introduced the subject EAVES desire for a five-year contract. Councilor Schultz stated his belief that the cost of other providers should be explored through a request-for-purchase. Supervisor Michalenko and Councilor Albanese both stated that they find the services by EAVES to be cost-effective and of reliable quality. No action was taken by the Board.

EXECUTIVE SESSION

Motion by Councilor Baker, seconded by Councilor Schultz.
RESOLVED, to enter into Executive Session at 8:38 p.m. under Section 104(1) of the Public Officers Law to discuss collective bargaining.

Adopted 7 Ayes