

At the Regular Meeting of the Town Council, Town of Eaton, held on August 14, 2012 at the Town of Eaton Office Building, 35 Cedar Street, Morrisville, New York there were present:

Priscilla Suits, Supervisor

Paul Orth, Councilman

Richard DePuy, Councilman

William Donnelley, Councilman

Ellen Andros, Councilwoman

Larry Phillips, Highway Superintendent

Debra Clark, Town Clerk

Also present: James Stokes, Town Attorney, Amy Will, Patrick Will, Catherine Jones, Toshia Hance, Bonnie Reynolds, Don Kelley, Dennis Sands, Joe Yankowski, Muriam Barrows, Werner Jansen, Cheryl Cary, Joseph Connors.

Supervisor Suits opened the meeting at 6:30 with the Pledge of Allegiance.

Councilwoman Andros moved to accept the July minutes. Second by Councilman Donnelly, all ayes. Motion carried.

PUBLIC HEARING-MORATORIUM CONTINUED:

After discussion of implementing a moratorium on gas drilling and hydrokfracking, Councilman Donnelly moved the following RESOLUTION-2-2012. Second by Councilman

RESOLUTION NO. 8
OF THE TOWN BOARD
OF THE TOWN OF EATON

A RESOLUTION ADOPTING A LOCAL LAW
ESTABLISHING AN INTERIM MORATORIUM ON CERTAIN NATURAL GAS AND
PETROLEUM EXPLORATION, EXTRACTION, STORAGE AND WASTE DISPOSAL ACTIVITIES
WITHIN THE TOWN OF EATON

WHEREAS, proposed legislation of the Town of Eaton, entitled “A local law imposing a moratorium and prohibition within the Town of Eaton on natural gas and petroleum exploration and extraction activities, underground storage of natural gas, and disposal of natural gas and petroleum extraction, exploration and production wastes”, has been duly introduced before this Board, and

WHEREAS, upon notice duly published and posted as required, a public hearing on the adoption of this proposed local law was held by the Town Board on June12, 2012, and

WHEREAS, pursuant to a referral duly made pursuant to the provisions of Section 239-m of the General Municipal Law, the Madison County Planning Agency has reviewed this proposed local law and has made its recommendation that this matter be returned to this Board for local determination, and

WHEREAS, this Board has previously determined, and hereby reaffirms that the adoption of this proposed legislation of the Town of Eaton is a Type II action as defined by section 617.5(c)(30) of the implementing regulations of the New York State Environmental Quality Review Act.

NOW, THEREFORE, IT IS HEREBY RESOLVED, after due deliberation, that this Board makes the following legislative determinations and findings:

A. 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 Eaton 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.

B. Findings of Fact.

1. Eaton is a community in the central portion of Madison County that takes great pride in, and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources.

2. Most residents of the Town are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.

3. The preservation of the Town's irreplaceable scenic sites, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to those who visit here.

4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place - whether or not businesses will want to locate, or people will want to live in and visit a place.

5. Allowing the activities prohibited by Section 3 of this Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located, Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.

6. If one or more of the activities prohibited by Section 3 of this Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result

in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 3 of this Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.

7. If one or more of the activities prohibited by Section 3 of this Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

8. Allowing one or more of the activities prohibited by Section 3 of this Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.

9. If one or more of the activities prohibited by Section 3 of this Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such activities could be hazardous or inconvenient to the inhabitants of the Town. Noise, traffic congestion, nighttime lighting, and vibrations can have negative effects on human health and wildlife.

10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 2 of this Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

11. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration Or Production Wastes (as that term is defined at Section 2 of this Local Law) have in other localities resulted, and could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.

12. The explicit proscription of the activities prohibited by Section 3 of this Local Law is a legitimate goal of land use laws. There is no question that the exclusion of specified industrial uses is a legitimate goal of such laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974), “[t]he concept of public welfare is broad and inclusive.... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.” 416 U.S. at 6; *see also Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning,' and held as follows: “We have never held, however, that the ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.” 87 N.Y. 2d at 683, 684.

13. More recently, two trial level courts of the New York State Supreme Court have both reached the same legal conclusion that a township has the legal authority and jurisdiction to prohibit the

types of uses described in this Local Law. *See, Anschutz Exploration Corporation v. Town of Dryden*, Index no. 2011-0902 (Tompkins County); *Cooperstown Holstein Corporation v. Town of Middlefield*, Index no. 2011-0930 (Otsego County). To the extent this Local Law imposes only a temporary moratorium on such uses, these recent decisions provide sound legal authority in support of the Town's enactment of this Local Law.

C. Purposes. The purpose of this Local Law is to enable the Town of Eaton to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 3 of this Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to address the same. The Town Board finds that a moratorium limited to one (1) year in duration, with a maximum duration of two years if extended by the Town Board, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between, on the one hand, the public need to safeguard the character and other resources of the Town of Eaton and the health, safety and general welfare of its residents, and, on the other hand, the rights of individual property owners and businesses desiring to conduct such activities during such period.

IT IS HEREBY FURTHER RESOLVED that the Town Board of the Town of Eaton finds it in the best interest of the Town of Eaton and its residents to adopt this proposed legislation of the Town of Eaton, entitled "A local law imposing a moratorium and prohibition within the Town of Eaton on natural gas and petroleum exploration and extraction activities, underground storage of natural gas, and disposal of natural gas and petroleum extraction, exploration and production wastes", and further finds the proposed local law to be in accordance with the comprehensive plan for the Town of Eaton, and does hereby adopt and enact this local law as presented. The Town Clerk is hereby directed to enter said local law in the minutes of this meeting and in the Local Law Book of the Town of Eaton, and to give due notice of the adoption of said local law to the Secretary of State. August 14 2012.

REPORTS:

The monthly report for Supervisor, Town Clerk, Codes, and the Planning Department handed out and reviewed.

HIGHWAY REPORT:

Highway Superintendent Phillips requested a change from last months meeting. Phillips would like to sell the 1973 Caterpillar Dozer on Auctions International. Motion by Councilman DePuy, second by Councilman Donnelly. All ayes, motion carried.

OLD BUSINESS:

NEW BUSINESS:

Attorney Stokes advised Council to form a Youth and Senior Commission.

Supervisor Suits informed Council of the pending resignation of Assessor David Gray.

PAY THE BILLS: Abstract 8

General Vouchers numbered A 100-114 \$2,293.68; B 25-27 \$278.25; SL8 \$536.09
Highway Vouchers numbered DA 76-82 \$ 1,597.41; DB 15-20 \$120,692.59
After review of Abstract 8, Councilman Donnelly moved to accept and pay the bills.
Second by Councilwoman Andros, all ayes. Motion carried.

ADJOURNMENT:

With no further business to bring before the Board, Councilman Donnelly moved to adjourn, second by Councilman DePuy.
All ayes, motion carried. Meeting adjourned at 7:40

Respectfully submitted,