towards property taxes would be increase however, not sure of percentage; the lighting
are directional foot candles on the property and meet every level restriction, they would
be 100% LED. As far as zoning change, they would need the approval of the Town
Board, Planning and Zoning Board of Appeals and need to apply for a Commercial
Planned Development. This is just a preliminary proposal and presentation to make the
Board and residents aware of their project proposal. As far as the traffic and road
commends, everything has to be approved by the Department of Transportation to
determine if this is acceptable. Mr. Brunelle added that the last thing that Byrne wants
is to build anything that would be unsafe. They are known to go above and beyond
what is necessary to please the public in any way possible.

Supervisor McConnell thanked the Byrne representatives for their presentation and the
audience for their questions and concern and reiterated that this was just an information
presentation; all the legal channels would have to be met prior to any project approval.

6. LITIGATION & OTHER LEGAL MATTERS

Supervisor McConnell asked Attorney Gilligan and Councilman Ohstrom to give a brief
summary of the events that have taken place to reach this resolution with regard to the
whole hydrofracking issues.

The outline of events began three years ago when Doolittle brought hydrofracking
concerns to the Town Boards attention. A committee was formed to investigate, with
the intent of remaining neutral. Throughout the three years the committee worked
closely with other municipalities looking at numerous studies, report, visits to
hydrofracking sites, holding public information meetings and presentations, public
hearings, examination of the Towns Comprehensive Plan, looking into the
infrastructure, roads and damage as a result or truck traffic, environmental resources,
checking into impact on water supply, amount of water used, effect on property values,
etc. After all this a moratorium was enacted on May 14, 2012 and renewed May 11,
2013 which is in effect through November 2013. The final result being the following
resolution.

TOWN OF LAFAYETTE
TOWN BOARD RESOLUTION
August 26, 2013

The following resolution was offered by Councilman Doolittle, who moved its adoption,
seconded by Councilman Ohstrom, to wit:
WHEREAS, pursuant to the Town of LaFayette’s authority under New York Town Law, a proposed Zoning Ordinance titled, “An Ordinance Amending ‘The 1970 Zoning Ordinance of the Town of LaFayette, as Amended’ by Adding Certain New Definitions; Amending Certain Definitions; Confirming and Clarifying that any Uses not Expressly or Specifically Permitted are Prohibited; Articulating Certain Prohibited Uses and Establishing a Severability Clause”, was presented and introduced at a regular meeting of the Town Board of the Town of LaFayette held on May 13, 2013; and

WHEREAS, the proposed Zoning Ordinance will have the effect of prohibiting, in each and every zone within the Town, the exploration for or extraction of natural gas and/or petroleum; the storage, treatment and disposal of natural gas and/or petroleum exploration and production materials; the storage, treatment, and disposal of natural gas and/or petroleum exploration and production wastes; and natural gas and/or petroleum support activities; and

WHEREAS, a public hearing was held on June 10, 2013 by the Town Board of the Town of LaFayette to consider the proposed Zoning Ordinance with proof of publication of notice of the public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed Zoning Ordinance having been heard, and said proposed Zoning Ordinance having been in the possession of the members of the Town Board of the Town of LaFayette in the manner required by law; and

WHEREAS, notice of the public hearing on the proposed Zoning Ordinance was also given to all adjoining municipalities and they were given a full and fair opportunity to be heard at said public hearing on June 10, 2013; and

WHEREAS, it was determined on May 13, 2013 that no other agency has the legal authority or jurisdiction to approve or directly undertake the adoption of a zoning ordinance in
the Town of LaFayette, such that there are no other involved agencies within the meaning of the State Environmental Quality Review Act (SEQRA) with respect to the proposed adoption of said Zoning Ordinance, with the result that the Town Board assumed lead agency status in this matter; and

WHEREAS, it was determined on May 13, 2013 that the adoption of said proposed Zoning Ordinance is a Type I action for the purposes of environmental review under SEQRA; and

WHEREAS, the SEQRA process for this action was completed by this Board at its July 8, 2013, meeting, this Board, having determined that a full environmental assessment form (EAF) would be required in connection with this matter; and

WHEREAS, the Board reviewed the said EAF, Supplemental EAF and Part 1D EAF and considered and discussed fully the potential environmental impacts of the proposed action; and

WHEREAS, it was determined on July 8, 2013 that adoption of said proposed Zoning Ordinance would not have a significant adverse effect on the environment and therefore a Negative Declaration was adopted for purposes of SEQRA, (A copy of the Negative Declaration is attached hereto and made part hereof as Schedule B); and

WHEREAS, as required by General Municipal Law, Section 239, this Zoning Ordinance was referred to the Onondaga County Planning Agency and that Agency at its meeting held on June 12, 2013 determined that the proposed legislation will have no significant adverse inter-community or county-wide implications and may consequently be acted on solely by the referring Board, and

WHEREAS, it is the determination of this Board that it is in the public interest to adopt said proposed Zoning Ordinance.
NOW, THEREFORE, it is

RESOLVED AND DETERMINED, that in addition to the “Findings of Fact” set forth in Appendix A to this Zoning Ordinance, this Board makes the “Findings” which are attached hereto as Schedule A; and it is further

RESOLVED AND DETERMINED, that the Town Board of the Town of LaFayette, Onondaga County, New York, does hereby adopt said proposed Zoning Ordinance as follows:

ORDINANCE
TOWN OF LAFAYETTE

AN ORDINANCE AMENDING “THE 1970 ZONING ORDINANCE OF THE TOWN OF LAFAYETTE, AS AMENDED” BY ADDING CERTAIN NEW DEFINITIONS; AMENDING CERTAIN DEFINITIONS; CONFIRMING AND CLARIFYING THAT ANY USES NOT EXPRESSLY OR SPECIFICALLY PERMITTED ARE PROHIBITED; ARTICULATING CERTAIN PROHIBITED USES AND ESTABLISHING A SEVERABILITY CLAUSE

BE IT ORDAINED, by the Town of LaFayette acting through its duly constituted Town Board and pursuant to the authority conferred by Section 265 of the Town Law, that “The 1970 Zoning Ordinance of the Town of LaFayette, as Amended” (hereinafter the “Town of LaFayette Zoning Ordinance”) is hereby further amended, as follows:

Article I. General Provisions

Section 1.1. Authority for Adoption

The Town Board hereby adopts this Ordinance pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Ordinance for all purposes by this reference.

Section 1.2. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Ordinance, and a copy of the text of such findings, determinations and declarations is set forth at Section 2. of Appendix A attached hereto.

Section 1.3. Purpose & Intent

The Purposes and Legislative Intent underlying the Town Board’s passage of this Ordinance are set forth at Section 3. of Appendix A attached hereto.
Section 1.4. Interpretation

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Town of LaFayette Zoning Ordinance affected by this Ordinance. They are intended as a legal guide to the administration and interpretation of this Ordinance and shall be treated as legislative history.

Article II. Amendments to Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance.

Section 1. Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance shall be amended so as to add the following terms, which terms shall have the meanings respectively set forth below, as follows:

“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 box, 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, Article7, §120(2)(b).

INJECTION WELL --- A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

LAND APPLICATION FACILITY --- A site where any Natural Gas Exploration and/or Petroleum 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 non-combustible, 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.
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.

NATURAL GAS AND/OR PETROLEUM EXTRACTION, EXPLORATION OR PRODUCTION WASTES --- 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: (a) 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; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) 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; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) 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; (e) portable or wheeled trailers or
vehicles or (f) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) 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, without any intention of further use.

NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES --- Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

NATURAL GAS COMPRESSION FACILITY --- Those facilities or combination of facilities that move natural gas or petroleum 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 non-methane 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 CO$_2$ separated from natural gas streams.

NON-REGULATED 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 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 NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US 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.

TOWN BOARD --- The Town Board of the Town.

TRANSMISSION LINE --- A pipeline that transports oil, 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.”

Section 2. Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance is hereby further amended so as to delete the present definition of the term “Accessory Building or Use” in its entirety, so as to add the following terms which shall have the meanings set forth below, as follows:

“ACCESSORY STRUCTURE --- A structure detached from and subordinate to a principal building on the same lot, with less than one-half of the floor space of the principal building, and which is used for purposes subordinate and customarily incidental to those of the principal building or use, including parking, storage and recreation. Structures used for agriculture, whether or not used for housing
animals, shall not be subject to the aforesaid ‘one-half of the floor space of the principal building’ limitation.

ACCESSORY USE --- A use customarily incidental and subordinate to the principal use located on the same lot with such principal use. A use shall not qualify for treatment as an accessory use if it dominates the ‘principal’ use in area, extent, or purpose.”

Section 3. Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance is hereby further amended so as to delete the present definition of the term “PERSON” in its entirety, and substitute the following text therefor:

“PERSON --- Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.”

Section 4. Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance is hereby further amended so as to delete the present definition of the term “TOWN” in its entirety, and substitute the following text therefor:

“TOWN --- The Town of LaFayette, Onondaga County, New York.”

Section 5. Article VIII – “Definitions”, Section B – “Particular Definitions”, of the Town of LaFayette Zoning Ordinance is hereby further amended so as to add the following text to the present definition of “GASOLINE SERVICE STATION”, said text to be inserted immediately following the end of the present sentence that begins “A building or premises used…”:

“Furthermore, in no event shall “GASOLINE SERVICE STATION” be construed to mean, be, or include any Explicitly Prohibited Uses as set forth in Article II, Section I of this Ordinance.”

Article III. Amendments to Article VII – “Administration”, Section G – “Savings Clause” of the Town of LaFayette Zoning Ordinance

Article VII – “Administration”, Section G – “Savings Clause” of the Town of LaFayette Zoning Ordinance is hereby amended to delete the present Section G – “Savings Clause” in its entirety and replace it with the following text therefor:

“Section G. Severability.

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this
Ordinance that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder this Ordinance or the application hereof to any other persons to circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Ordinance, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.”

Article IV. Amendments to Article I – “General”, Section F – “Application of District Regulations” of the Town of LaFayette Zoning Ordinance.

Article I – “General”, Section F – “Application of District Regulations,” of the Town of LaFayette Zoning Ordinance is hereby amended: (i) so as to replace the present title of such Section F (“Application of District Regulations; Any Use Not Specifically Permitted is Prohibited”; and (ii) so as to delete the entirety of the (present) text of Clause 1. thereof (beginning “Except for non-conforming uses permitted…”), and replace the deleted text with the following:

“1. Except for non-conforming uses permitted under Article V, Section D, any use not specifically set forth as a permitted use in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district.”

Article V. Amendments to Article II – “District Regulations” to provide a new title for said Article II of the Town of LaFayette Zoning Ordinance and to add a new Article II, Section I.

Section 1. Article II – “District Regulations” of the Town of LaFayette Zoning Ordinance is hereby amended so as to replace the present title of such Article II as follows:

“Article II. District Regulations and Explicitly Prohibited Uses.”

Section 2. The Town of LaFayette Zoning Ordinance is further amended to add the following new Article II, Section I to read as follows.

“Section I. Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

1. Explicitly Prohibited Uses. The following uses and activities (being respectively defined in Article VIII, Section B of this Ordinance) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered, erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

(a) Land Application Facility;
(b) Natural Gas and/or Petroleum Exploration Activities;
(c) Natural Gas and/or Petroleum Extraction Activities;
(d) Natural Gas and/or Petroleum Extraction, Exploration, Or Production Wastes Disposal/Storage Facility;
(e) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump;
(f) Natural Gas Compression Facility;
(g) Natural Gas Processing Facility;
(h) Non-regulated pipelines;
(i) Underground Injection; and
(j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Section is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this Ordinance as “Explicitly Prohibited Uses,” any one of the above expressly prohibited uses may be referred to in this Ordinance as an “Explicitly Prohibited Use,” and any combination of more than one such use may also be referred to as “Explicitly Prohibited Uses.

2. Prohibition Against Natural Gas and/or Petroleum Extraction, Exploration Or Production Wastes. The Town of LaFayette hereby exercises its authority and right under NY ECL § 27-0711 to adopt local legislation that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Article complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

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.

3. No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this Article are not intended, and shall not be construed, to (a) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (b) prevent or prohibit transmission lines or the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supply natural gas to residents of or buildings located in the Town; or (c) prevent or prohibit 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.

4. Pre-Existing, Legal Non-Conforming Natural Gas and/or Petroleum Extraction Activities.

   (a) Notwithstanding any provision of the Town of LaFayette Zoning Ordinance to the contrary, any Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this amendatory Ordinance shall be subject to the following:

   i. If, as of the effective date of this amendatory Ordinance, substantive Natural Gas and/or Petroleum Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation (“DEC”) and all other regulating agencies for such activities, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of clauses (b) and (c) of this Subsection 4.

   ii. Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this amendatory Ordinance and which do not qualify for treatment under the preceding clause (a)(i) of this Subsection 4 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Subsection 1 of this Section I.

   (b) Upon the depletion of any well which is allowed to remain in operation after the effective date of this amendatory Ordinance by virtue of clause (a)(i) of this Subsection 4, or upon any other substantive cessation of Natural Gas and/or Petroleum Activities (otherwise grandfathered by virtue of clause (a)(i) of this Subsection 4 for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Subsection 1 of this Section I.

   (c) Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by clause (a)(i) of this Subsection 4 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas and/or Petroleum Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this amendatory Ordinance. Any expansion or attempted or purported expansion shall not be grandfathered under clause (a)(i) of this Subsection 4, and instead shall in all respects be prohibited as contemplated by Subsection 1 of this Section I.”

Article VI. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation
only to the provision of this Ordinance that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Ordinance or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Ordinance, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Article VII. Effective Date of this Ordinance.

This Amendment to the 1970 Zoning Ordinance of the Town of LaFayette, as amended, shall take effect as provided in Section 265 of the Town Law.

APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF LAFAYETTE ORDINANCE, BEING

An ordinance to amend “The 1970 Zoning Ordinance of the Town of LaFayette, as Amended” by Adding Certain New Definitions; Amending Certain Definitions; Confirming and Clarifying that any Uses not Expressly or Specifically Permitted are Prohibited; Articulating Certain Prohibited Uses and Establishing a Severability Clause;

The Town of LaFayette Ordinance which this Appendix A is attached, is herein sometimes referred to as “this Ordinance” or “the Ordinance.”

This Appendix A is part of the Ordinance to which it is attached for all purposes.

Section 1. Authority.

This Ordinance is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of LaFayette pursuant to Section 265 of the Town Law.

Section 2. Findings of Fact.

1. The Town of LaFayette is a community in Onondaga County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources. The Town includes 39.25 square miles of land area with .35 square miles of surface water and is located south of the City of Syracuse. It has a varied topography and a blend of rural countryside, suburban tracts and village-like settings. There is very little industry in the Town. It has a number of ponds, wetlands, creeks and streams, which are tributary to Oneida and Onondaga Lakes. Because of the Town’s topography, exceptional vistas and views are available. The predominant uses are
residential and agricultural in nature, with some commercial (retail and office), primary/secondary schools, library, governmental uses and several apartment complexes.

2. Most Town residents are completely dependent upon aquifers and ground water wells for life-sustaining water. Over 80% of town properties rely upon dug or drilled wells for potable 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. Due to its rural nature, public water is cost-prohibitive in the Town. A recent effort to bring public water to the hamlet of the Town was turned down by residents, primarily due to cost.

3. 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 its visitors.

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 one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance to be conducted within the Town 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 and decreased recreational opportunities.

6. If one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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 Article II, Section I of the Ordinance. 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 Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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 Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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 Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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 Article VIII of the Ordinance) 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 Article VIII of the Ordinance) 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 dumpster 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 Article II, Section I of the Town of LaFayette Zoning Ordinance is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws.

As the United States Supreme Court stated in Town of Belle Terre v. Borass, 416 U.S. 1 (1974):

*The 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
And 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 exclusive 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. (emphasis added.)*

Section 3. Purposes and Intent.

The Purposes and Legislative Intent respecting this Ordinance are as follows:

A. Purposes. This Ordinance is enacted so as to take proactive steps to protect and preserve the quality of the Town’s air and water and historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Ordinance is intended and is declared by the Town Board to:

(1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(2) promote the healthy, safety, and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town;

(3) protect the Town’s priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit there, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town; and

(4) protect the Town’s irreplaceable historic, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town.

B. Declaration of Intent.

(1) Exercise of Police Power. This Ordinance is a police power, public nuisance and land use regulation designed to establish and provide for general land use regulation, environmental
protection, public safety, prevention of increased traffic congestion, protection of agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts, resulting from the (prohibited uses)

(2) Prohibition Against Specified Solid Wastes. This Ordinance also intends to regulate, in a manner consistent with law, including without limitation, NY ECL 27-0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection, and disposal of materials herein, defined as (wastes) on lands and in bodies of water within the Town.

(3) Protection of Private Drinking Water Supplies. This Ordinance is intended to protect the drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control Programs administered by the United States Environmental Protection Agency.

(4) Matters of Local Concern. This Ordinance is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(5) Negative Externalities. This Ordinance is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(6) Land Use Control. This Ordinance is intended to act as and is hereby declared to be an exercise of the permissive “incidental control” of a police power 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. This Ordinance is not intended to regulate the operational processes of any business. This Ordinance applies generally and is intended to promote the interests of the community as a whole.

The question of the foregoing resolution was duly put to a vote and upon roll call, the vote was as follows:

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<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Voted</th>
<th>Choice</th>
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<tbody>
<tr>
<td>Jerry Doolittle</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
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<tr>
<td>Steve Zajac</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
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<tr>
<td>Andrew Ohstrom</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
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The foregoing Resolution was thereupon declared duly adopted.

Dated: August 26, 2013

SCHEDULE A

Findings

I. State and Federal Regulation and Oversight; concerns include but are not limited to:


b. The United States House of Representatives Committee on Energy and Commerce released a report in April 2011 titled Chemicals Used in Hydraulic Fracturing which states, “Yet questions about the safety of hydraulic fracturing persist, which are compounded by the secrecy surrounding the chemicals used in hydraulic fracturing fluids.” United States House of Representatives, Committee on Energy and Commerce, Minority Staff. Chemicals Used in Hydraulic Fracturing, (2011); available at http://democrats.energycommerce.house.gov/sites/default/files/documents/Hydraulic%20Fracturing%20Report%204.18.11.pdf

c. A report authored by University of Oneonta Professor Ronald Bishop and others in November 2009 for former Congressman Michael Arcuri, states that “proceeding with any new projects to extract methane from unconventional reservoirs by current practices in New York State is highly likely to degrade air, surface water and ground water quality, to harm humans, and to negatively impact aquatic and forest ecosystems. Mitigation measures can partially reduce, but not eliminate, the anticipated harm.” Bishop, Ronald E. Chemical and Biological Risk Assessment for Natural Gas Extraction in New York, (2011); available at http://flimarcellusconference.files.wordpress.com/2011/07/risk-assessment-natural-gas-extraction-1.pdf

e. Studies or analyses of both the long-term and cumulative impacts of high volume slick water hydraulic fracturing (HVSWHF) operations on a community’s water, air, health and economy have not been completed, and no analysis of these types of impacts are included by the DEC in the Preliminary Revised SGEIS (July 2011). New York State Department of Environmental Conservation. Revised Draft, Supplemental Generic Environmental Impact Statement on the Oil, Gas, Mining Regulatory Program, (2011); available at [http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf](http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf)


g. In a letter to Commissioner Alexander B. Grannis of the New York State Department of Environmental Conservation (the “DEC”), the Onondaga County Council on Environmental Health set forth a list of unresolved issues of great concern regarding the DEC’s draft Supplemental Generic Environmental Impact Statement governing potential natural gas drilling activities in the Marcellus Shale. These concerns include the treatment and disposal of flowback water, the long term protection of private and public water supplies, and the use of water resources in the hydrofracking process. Onondaga County Health Department, Division of Environmental Health; Letter to Alexander B. Grannis, Commissioner of New York State Department of Environmental Conservation (December 23, 2009).

II. General concerns related to drilling for natural gas on the health, safety and welfare of the Town of LaFayette and its residents include but are not limited to:

a. Drilling for natural gas by its very nature has the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to drilling operations. Many of these are unavoidable, due to the large land occupation and density of well drilling required and the relatively high risk of accidents. Such negative community 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, increased demand on emergency services, increased cost to residents, 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 tourism.

b. Natural gas exploration or extraction or the storage, transfer, treatment, application to land or roadways, or disposal of natural gas exploration and production wastes occurring within the Town is likely to endanger the health, safety and welfare of Town residents through the deposit of toxins and radioactive substances into the air, soil, water, environment, and the bodies of residents within the Town. Irreparable harm to the Town’s drinking water supplies may
occur. Methane contamination of groundwater in severe cases can result in safety hazards such as explosions in residences and businesses using well water. Town and residents’ property could be damaged by the corrosive nature of these waters.

c. Air, soil and water contamination may occur during the different stages of natural gas exploration and extraction operations and the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and such contamination could have adverse impacts on plant, human and animal health and environmental quality. Such impacts, many already documented in other areas, will directly affect the quality of life and livelihoods of residents of the Town of LaFayette.

III. Risks to water include but are not limited to:

a. The Town of LaFayette is committed to protecting and preserving the quality and viability of its water resources including its wetlands, streams, watersheds, and reservoirs which include Jamesville Reservoir, Butternut Creek and Onondaga Creek. See Town of LaFayette Comprehensive Plan (August 2012).

b. Residents of the Town of LaFayette depend on the purity of lake or groundwater as their primary drinking water source either through private wells or public water systems. See Town of LaFayette Comprehensive Plan (August 2012).

c. Surface spills and underground migration of liquid wastes that originate from the exploration, drilling and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) can occur, and such products may come into contact with and contaminate and pollute groundwater and/or soil. Experience from states in which hydraulic fracturing is active indicates that contamination of drinking water and streams is not uncommon whether it be due to poorly constructed well casings, cracked well casings, surface spills, leaking containment ponds, migration of contamination through abandoned wells, or for other undocumented or unexplained reasons. Michaels et al. 2010. Fractured Communities: Case Studies of the Environmental Impacts of Industrial Gas Drilling; available at http://www.riverkeeper.org/wp-content/uploads/2010/09/Fractured-Communities-FINAL-September-2010.pdf

d. Water contamination has been documented in a peer reviewed paper in the Proceedings of the National Academy of Science by Dr. Stephen Osborn and others from Duke University titled Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing which looked at 68 wells across Pennsylvania. The research showed levels of methane with the chemical profile of shale-gas in groundwater were 17 times higher on average in water wells located within a kilometer of active hydraulic fracturing than water wells where there was no hydraulic fracturing, and were very often above the federal safety standard for explosions. Osborn, Stephen G., et al. Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing, Proceedings of the National Academy of Sciences, (2011); available at http://www.pnas.org/content/early/2011/05/02/1100682108.full.pdf+html
e. State University of New York at Buffalo researchers led by Tracy Bank reported that Marcellus Shale is naturally enriched in uranium and has enhanced solubility and mobility due to water-rock interactions over millions of years and hence produced water secondary to the fracking process contains unacceptably high levels of radioactivity. Bank, Tracy. *Trace Metal Chemistry and Mobility in the Marcellus Shale*, (2010); available at [http://www.epa.gov/hfstudy/tracemetalgeochemistryandmobilityinthemarcellusformation1.pdf](http://www.epa.gov/hfstudy/tracemetalgeochemistryandmobilityinthemarcellusformation1.pdf)

f. An analysis on wastewater from the gas and oil industry treated at a brine treatment facility in Pennsylvania by Dr. Conrad Volz and others from the Center for Healthy Environments and Communities at the University of Pittsburgh shows levels of barium, strontium, bromide, benzene, 2-butoxyethanol and other contaminants in the effluent entering a local creek well in excess of EPA standards for protection of human health and aquatic life. The report cites concern for those who drink the water from municipal authorities downstream as well as those who recreate in the area and are exposed to chemicals emanating from the creek either through skin absorption, inhalation of volatile compounds, or ingestion of fish taken from the creek. Volz, Conrad D., et al. Contaminant Characterization of Effluent from Pennsylvania Brine Treatment Inc., Josephine Facility: Implications for Disposal of Oil and Gas Flowback Fluids from Brine Treatment Plants, EPA Hydraulic Fracturing Study Technical Workshop 3, Fate and Transport, March 28-29, 2011; available at [http://www.epa.gov/hfstudy/contaminantcharacterizationofeffluent.pdf](http://www.epa.gov/hfstudy/contaminantcharacterizationofeffluent.pdf).

g. Experience in Pennsylvania where hydraulic fracturing is allowed shows water and flow back fluid disposal techniques and regulations at the State level are inadequate or non-existent and that standard waste water treatment techniques are not effective when treating these toxic fluids. See generally, Urbina, Ian, February 27, March 2, and March 4, 2011 articles and supporting documentation; available at [http://www.nytimes.com/interactive/us/DRILLING_DOWN_SERIES.html](http://www.nytimes.com/interactive/us/DRILLING_DOWN_SERIES.html]. Letter from U.S. EPA Region 3 Regional Director Shawn Garvin to PA Department of Environmental Protection, March 7, 2011.

h. At the request of Congress, the United States Environmental Protection Agency is performing a study of the potential impacts of hydraulic fracturing on drinking water resources. A final draft report is expected to be released for public comment and peer review in 2014. Information regarding the study can be found at [http://www2.epa.gov/hfstudy](http://www2.epa.gov/hfstudy).

IV. Risks to air quality include but are not limited to:


b. A variety of air pollutants are included in the gaseous releases associated with several point sources in the gas drilling process and with leakage from storage and transmission infrastructures. Pollutants include benzene, formaldehyde, and other aromatic hydrocarbons and
hydrogen sulfide, carbon disulfide and other sulfur gases in addition to radon. Development of
the Barnett Shale gas in Texas has led to high levels of air pollution, including benzene
concentrations of up to 15,000 ppb in air. These concentrations are high enough to cause
toxicity. Wolf Eagle Environmental, *Town of DISH, Texas, Ambient Air Monitoring Analysis,*

c. In the Marcellus Shale region, only limited air quality monitoring has occurred to date,
and the highest concentrations of benzene found are far lower than those found in Texas for the
Barnett Shale, only 758 ppb. See Pennsylvania Department of Environmental Protection, 2010;
*Southwestern Pennsylvania Marcellus Shale Short-Term Ambient Air Sampling Report,* available
at [http://www.dep.state.pa.us/dep/deputate/airwaste/aq/aqm/docs/Marcellus_SW_11-01-10.pdf](http://www.dep.state.pa.us/dep/deputate/airwaste/aq/aqm/docs/Marcellus_SW_11-01-10.pdf)
Still, exposure to levels of chemicals such as benzene at these lower levels can pose a significant
cancer risk. A recent peer reviewed study suggests a strong link between low-level chronic
benzene exposure and risk of leukemia. Talbott et al. 2011. *Risk of Leukemia as a result of
community exposure to gasoline vapors: A follow up study.* Environmental Research 111: 597-602.

d. Emissions from internal combustion engines, primarily using diesel fuel, are a
significant and damaging source of air pollution associated with extraction of natural gas and
petroleum, as these processes rely heavily on such engines for many aspects of the overall
process (such well drilling and fracking and a high frequency of heavy truck trips to and from the
sites). A study in 2009 by Dr. A. Armendariz of Southern Methodist University (now Director
for EPA Region 6) found high levels of smog-forming compounds (nitrogen oxides and volatile
organic compounds, or VOC’s) in air associated with oil and gas production in the Barnett Shale
region of Texas, in addition to greenhouse gases and air-borne toxic chemicals. Armendariz, Al.
*Emissions From Natural Gas Production in the Barnett Shale Area and Opportunities for Cost
particulate matter and ozone levels are known to cause a variety of health problems including
asthma, chronic obstructive pulmonary disorder, cancer and other diseases. Wargo, John. *The
Harmful Effects of Vehicle Exhaust, A Case For Policy Change.* Environment and Human

e. The environmental footprint for shale gas is greater than that for conventional gas or
oil when viewed on any time horizon, particularly so over 20 years. Compared to coal, the
footprint of shale gas is at least 20% greater and perhaps more than twice as great on the 20-year
horizon and is comparable when compared over 100 years. Howarth, Robert W., Renee Santoro,
Anthony Ingraffea, *Methane and the Greenhouse-Gas Footprint of Natural Gas from Shale

f. A study which focused on air quality in the Southwestern Pennsylvania Marcellus
Shale Region found natural gas constituents in the air near Marcellus Shale drilling operations
including methane, ethane, propane and benzene. Lazor, Nick. *Southwestern Pennsylvania
Marcellus Shale Short-Term Ambient Air Sampling Report,* Bureau of Air Quality, PA
Department of Environmental Protection.
V. Health risks include but are not limited to:


d. New York State selected an outside health panel of three experts to review the state’s environmental study on hydrofracking. The panel is comprised of John Adgate, Chair of the Environmental and Occupational Health Department at the Colorado School of Public Health; Lynn Goldman, Dean of George Washington University’s School of Public Health and Health Services; and Richard Jackson, Chair of the Department of Environmental Health Sciences at the University of California Los Angeles’ Fielding School of Public Health. *Coin, Glenn. New York State Selects Outside Panel to Review Hydrofracking Study*, Syracuse Post-Standard (November 15, 2012); available at [http://www.syracuse.com/news/index.ssf/2012/11/new_york_state_selects_outside.html#incart_river_default](http://www.syracuse.com/news/index.ssf/2012/11/new_york_state_selects_outside.html#incart_river_default)

f. By letter dated February 12, 2013, Department of Health Commissioner, Nirav Shah, M.D. wrote to the Commissioner of the New York State Department of Environmental Conservation to inform him the Department of Health would need additional time to assess the public health impacts of hydraulic fracturing. At that time Commissioner Shah anticipated completing the Public Health Review “within a few weeks”. To the Board’s knowledge, the Public Health Review is still ongoing. New York State Department of Health, Commissioner Nirav Shah, M.D., M.P.H.; Letter to Commissioner Joe Martens, New York State Department of Environmental Conservation (February 12, 2013).

g. A review of the potential health effects of chemicals used during natural gas operations found that only 10% of the chemical products used by the natural gas industry had no known health effects, and 90% had at least one potential health effect. Nearly half of the products contained one or more chemicals considered to be endocrine disruptors, which are chemicals that interfere with the human endocrine system. Unlike almost all other industrial processes, natural gas drilling directly introduces chemicals into the land and subsurface of the earth. The brain and nervous system can be harmed by 55% of the chemicals the industry uses. The storage, handling, accidental discharge or intentional discharge of such chemicals could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. Accidental chemical spills, discharges of toxic and hazardous materials, and flooding can threaten the quality and quantity of water supplies and resources both in the Town, posing potential public health and safety hazards. The Endocrine Disruption Exchange, Chemicals in Natural Gas Operations, Health Effects Spreadsheet and Summary; available at www.endocrinedisruption.com/chemicals.multistate.php.

h. A 2011 study identified over 632 chemicals used in natural gas extraction; just over half (55%) are well described in the scientific literature. Of these, 75% are known irritants to the eyes, skin, respiratory and GI systems; 40-50% may be neuro-, cardio-, or renotoxic; 37% affect endocrine glands; and 25% are mutagens or carcinogens. J. Colborn T, Kwiatokowski C, Shultz K, Bachran M, (2011) Natural Gas Operations from a Public Health Perspective, Human and Ecological Risk Assessment: An International Journal, 17:5, 1039101056.

i. A presentation by Trevor M. Penning from the Perelman School of Medicine at the University of Pennsylvania set forth the public health issues and impacts of hydraulic fracturing including the health effects of the chemicals used in hydraulic fracturing, potential water pollution from flow-back fluid, potential air pollution, and the vulnerability of certain populations such as pregnant women and children. A study of 11 homes in Dimock, Susquehanna County Pennsylvania, impacted by hydrofracking revealed 6/11 homes having elevated Na, CH4, and Cr and 2/11 homes with elevated As. Another study of 7 residential wells in Leroy Township, Bradford County Pennsylvania found 2 wells with Arsenic and elevated Na. Dr. Penning urged the use of the “precautionary principle” with regard to hydrofracking which means: “The precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.” Penning, Trevor M., Ph.D. Hydrofracking: Public Health Issues and Impacts (May 2012); available at http://www.med.upenn.edu/ceet/documents_user/UNCMarcellusShale_Penning4.pdf.
VI. Community impact findings include but are not limited to:

a. According to preliminary results of an economic study conducted by Susan Christopherson at Cornell University which focused on areas in Pennsylvania where hydraulic fracturing is more developed found: Christopherson, Susan; Marcellus Hydro-Fracturing, What Does it Mean for Economic Development, (2011); available at http://www.greenchoices.cornell.edu/downloads/development/Marcellus/Marcellus_Prelim_Results.pdf; see also, Christopherson, Susan. The Economic Consequences of Marcellus Shale Gas Extraction: Key Issues. CaRDI Reports, No. 14, September 2011.

i. An average of 890-1,340 truck trips per well site cause a high potential for road degradation. Without clear direction from the New York State Legislature, taxpayers in the Town of LaFayette and Onondaga County are likely to be financially responsible for resulting road repair.

ii. Bradford County, Pennsylvania saw an increase in demand on health, educational, administrative, emergency response and environmental monitoring services and an increase in public safety costs.

iii. Annual production from a shale gas well declines by about 50 percent in the first year, leaving royalty revenues to drop and does not constitute a long-term strategy for economic development in rural areas.

iv. While gas drilling regions in Pennsylvania do show job gains, a vast number of high paying jobs are not within the state and the long-term economic gain is often not positive at the pace and scale and development seen in Pennsylvania.

v. A rapid increase in activity can be expected once permitting begins based on experience from Pennsylvania, where 71 permits were granted in 2007 compared with 1,984 in 2009, which qualifies the pace of development as a boom and subject to bust.

b. Information gathered by the Tompkins County Council of Governments Task Force on Gas Drilling’s Land Value and Assessment Workgroup indicates mortgage lending is often compromised under the conditions stipulated in many gas leases resulting in a decrease in property value and an inability to sell property. Tompkins County Council of Governments Task Force; available at http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/LandValues_Assessment.html

c. A report on the impact of hydrofracking in Bradford County, Pennsylvania completed by Troy Community Hospital found, among other things: (i) an increase in industry related injuries and exposures including foot and leg wounds, exposure to frack fluids, cellulitis or flesh eating bacteria; (ii) increased traffic and motor vehicle accidents; (iii) higher volume of calls for EMS services; (iv) negative impacts on home care services as a result of increased gas use, road disrepair, and vehicle wear, resulting in decreased productivity; (v) increased workmen’s compensation injuries; and (vi) potential contamination of water supplies related to caustic
d. A study on the potential impacts of gas drilling on the tourism industry in the three county region (Chemung, Schuyler, Steuben) served by the Southern Tier Regional Planning and Development Board found the proliferation of drilling could adversely affect the three county region’s tourism industry: (i) high occupancy rates in hotels, motels, campgrounds, and other locations as a result of the influx of gas workers could make it more difficult for visitors to find accommodations; (ii) demand for hotel rooms could lead to higher prices; (iii) the nature of drilling, its visual impacts, could mar the unique visual landscape of the southern tier. The study also concluded that the effects of truck traffic from drilling will include; (i) heavier road traffic, on highways, secondary roads, and city streets; (ii) increased air pollution; (iii) increased noise pollution; (iv) increased traffic accidents and safety risks; and (v) damage to roads, especially secondary roads. Also hunting, fishing and other outdoor recreation which contributes more than $6 billion to the New York economy annually could be negatively impacted by increased human activity, new roads, truck traffic and pollution. Rumbach, Andrew. Natural Gas Drilling in the Marcellus Shale: Potential Impacts on the Tourism Economy of the Southern Tier. 2011.; available at [http://www.greenchoices.cornell.edu/downloads/development/marcellus/Marcellus_Rumbach.pdf](http://www.greenchoices.cornell.edu/downloads/development/marcellus/Marcellus_Rumbach.pdf)

e. According to a study by C.J. Randall, a graduate student in the Department of City and Regional Planning at Cornell University, the burden hydrofracking places on existing transportation infrastructure is extensive. Dust, noise and road damage from industry truck travel are tops on the list of citizen complaints in areas where shale is extracted via shale gas drilling. A typical Marcellus well requires 5.6 million gallons of water during the drilling process, in almost all cases delivered by truck. Millions of gallons of liquid used in the short initial drilling period account for half of the estimated 890 to 1340 truckloads required per well site. Because of its weight, the impact of water hauled to one site (364 trips) is the equivalent of 3.5 million car trips. Moreover, local municipalities are predicted to be impacted most. Estimates regarding risk of damage to roads indicate the risks to state roads is 5% (negligible); the risk at the county level is approximately 20% (low); and the risk to the roads built by towns and municipalities is approximately 90% (high). (emphasis added); Randall, CJ. Hammer Down: A Guide to Protecting Local Roads Impacted by Shale Gas Drilling. Work Paper Series, A Comprehensive Economic Impact Analysis of Natural Gas Extraction in the Marcellus Shale. December, 2010; available at [http://www.greenchoices.cornell.edu/downloads/development/marcellus/Marcellus_Randall.pdf](http://www.greenchoices.cornell.edu/downloads/development/marcellus/Marcellus_Randall.pdf)

f. Chemicals used in the hydrofracking process include but are not limited to Benzene, Formaldehyde, Dioxane, and Hydrochloric Acid. These chemicals are known carcinogens, highly toxic (even at small doses), and can cause damage to the liver, central nervous system, and other organs. Shelly, Tom. The Health Effects and Other Hazards of Hydrofracking, Upstate Medical University Public Health Symposium. April 13, 2011.

g. A report authored by Robert Oswald, a professor of molecular medicine at Cornell’s College of Veterinary Medicine and veterinarian Michelle Bamberger found that exposure to
hydraulic fracturing operation may have led to dozens of cases of illness, death and reproductive issues in cows, horses, goats, llamas, chickens, dogs, cats, fish and other wildlife. Some of the case studies in the report found that in Louisiana, 17 cows died within an hour of direct exposure to hydraulic fracturing fluid with cause of death being attributed to circulatory collapse and respiratory failure. A farmer who had 140 cows exposed to hydraulic fracturing fluid saw 70 of them die and there were high incidences of stillborn and stunted calves. Oswald, Robert et al. Impact of Gas Drilling on Human and Animal Health, New Solutions: A Journal of Environmental and Occupational Health Policy, (2012), 22(1): 51-77.

h. In a 2012 report, researchers from Duke University and Resources for the Future studied the impact on property values from shale gas development in Pennsylvania. The study looked at all properties sold in Washington, County, Pennsylvania from 2004 to 2009, which included over 19,000 properties. The study found that the value of properties located within 2000 meters of a well-pad saw an estimated reduction in property values of nearly 24%. The study attributes the reduction in property values to the potential for groundwater contamination associated with drilling. The study found that risks from groundwater contamination “lead to a large and significant reduction in house prices” which “offset any gains to the owners of groundwater-dependant properties from lease payments or improved local economic conditions.” Muehlenbachs, Luciga et al. Shale Gas Development and Property Values: Differences Across Drinking Water Resources, Discussion Paper (July 2012).

i. In a paper analyzing the relationship of setbacks and percentage of surface and subsurface area available for drilling, Stanley Scobie, commenting on New York’s SGEIS, found that proposed bans, moratoria, and setbacks are proportional to the quantity of water served. In other words, water supplies in the most densely populated areas are receiving greater protection while individual homeowners and underutilized watersheds are getting much lower protections. Stanley R. Scobie, Setbacks: How Far Is Far Enough? Physicians, Scientists and Engineers for Health Energy (Jan. 11, 2012); available at http://www.psehealthvenergy.org/data/Migration_Setback_health_rdSGEIS2011Comments-FINAL_WITH FIGURES.pdf

j. A report by Ronald E. Bishop regarding abandonment of Oil and Gas wells in new York found based on annual reports from the Division of Mineral Resources, New York State Department of Environmental Conservation, over the last twenty-five years the oil and gas industry which has consistently neglected to plug most (89%) of its depleted wells. Since the year 200, abandoned wells have only been plugged at percentage rates ranging from 3.5% to 7.1%. Moreover, there is currently no program, existing or proposed to monitor, repair, and plug abandoned wells which have begun to leak. Bishop, Ronald E., History of Oil and Gas Well Abandonment in New York, Sustainable Otsego 2000 (Jan. 8, 2012); available at http://hydroquest.com/Hydrofracking/Bishop%20-%20NYS%20Regulatory%20Well%20Plugging%20Failure(P).pdf

k. Although this proposed legislation will act to restrict the exploration, extraction and related activities related to natural gas with the resultant loss of potential jobs and the potential loss of income to various property owners, this Board has considered these impacts and balanced them against the potential adverse environmental impacts and has determined that this legislation
should be enacted in the interests of the public health, safety and welfare and the protection of our Town’s environment.

**Master Plan**

a. This proposed Ordinance is consistent with the Town’s Comprehensive Plan as set forth in the Town of LaFayette Comprehensive, August 2012 (hereinafter “Plan”).

- This Ordinance is consistent with the Goals of the Plan which include protecting the open space, agriculture scenic views and the community’s rural character throughout the Town.

- This legislation is consistent with the Plan’s Vision Statement which provides:

- “LaFayette is a beautiful rural town and a great place to live. Our vibrant hamlet, surrounding farmland, green spaces, and scenic views are preserved through thoughtfully managed development. Our proud community is supported by proactive leadership. We welcome a diverse population, encourage the development of compatible businesses, and strive to capitalize on our existing assets and historic identity as the Crossroads of New York State.”

- Furthermore, this legislation is consistent with the historical development of the Town and its goals for future development centered around agriculture and small business in the Town’s hamlet areas.

- This legislation protects and preserves the valuable agricultural resources of the Town which includes over 5,136 acres of productive agricultural land including land used for dairy products, field cops, orchards and other operations.

- This legislation protects and preserves the Town’s agricultural lands and the water resources they depend upon. The plan aptly captures the crucial role agriculture has played in the development and continued vitality of the Town.

- Furthermore, the Town of LaFayette is home to exceptional agricultural soils categorized as Prime Farmland Soils, which means they have the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.

- This legislation protects and preserves open space which is a defining element to the character of the Town and to the quality of life of its residents.

- This legislation protects and preserves the parks and recreational areas of the Town including Fred Stafford Memorial Park, LaFayette Beach Park, Bailey Park, LaFayette Nature Preserve, Jamesville Beach County Park, the Apple Festival grounds, Mason Hill Land Trust, Cherry Valley Preserve, and many other precious recreational areas.
• This legislation protects and enhances the rural community atmosphere and lifestyle of the Town as well as the aesthetic attributes of the Town, particularly Mason Hill, Bare Mountain, Tully and Butternut Valleys, Butternut and Onondaga Creeks and the many other open space areas that provide precious scenic views and natural beauty within the Town.

• This legislation recognizes the importance of the Town’s highway system and the significant cost of maintaining it by protecting it from the high volume, heavy truck traffic associated with natural gas exploration, extraction and related activities.

• This legislation preserves the functioning of local streets, while maintaining livability along local streets and roads, by restricting a use that has demonstrably adversely affected roads in Pennsylvania, where these uses are prevalent.

• This legislation acts to preserve the integrity of the Town’s environment and natural resources of which there are many including: wetlands, Jamesville Reservoir, Bare Mountain, Irish Hill, Mason Hill, Tully and Butternut Valleys, Butternut and Onondaga Creeks and natural woodlands.

• This Ordinance is consistent with the Town’s Goal of protecting its surface and groundwater resources and helps achieve the Town’s stated Implementation Measure regarding the same:

• “Ensure natural gas, and other natural resource extraction, does not harm surface or groundwater resources.”

• Groundwater is the overwhelming source of drinking water for households in the Town and the protection of the Town’s groundwater resources is an important priority of the Town. The Comprehensive Plan recognizes, in light of previous salt contamination of groundwater resources, that the prohibited uses set forth in this legislation could lead to contamination of the Town’s precious groundwater resources.

• This legislation protects valuable groundwater, surface water, farmlands, wetlands and other natural resources from harmful impacts of natural gas exploration, extraction and related activities – as is amply demonstrated by adverse impacts elsewhere.

• This legislation protects the Town’s Public Water system.

See “Findings of Fact” set forth in Appendix A to the proposed Ordinance for additional findings.

Councilman Ohstrom wanted to publically thank all those involved in the investigation and especially thanked Nancy Mueller for all her extensive work on the project and her numerous hours of time spent in doing so.
NEGATIVE DECLARATION
Notice of Determination of Non-Significance

Project Number: Prohibited Use Legislation – Zoning
Date: July 8, 2013

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The Town of Lafayette Town Board, as lead agency, has determined that the proposed action described below will not have a significant effect on the environment and a Draft Environmental Impact Statement will not be prepared.

Name of Action: “An ordinance amending The 1970 Zoning Ordinance of the Town of LaFayette, as amended, by Adding Certain New Definitions; Amending Certain Definitions; Confirming and Clarifying that any Uses not Expressly or Specifically Permitted are Prohibited; Articulating Certain Prohibited Uses and Establishing a Severability Clause”

SEQR Status: Type I X
Unlisted □

Conditioned Negative Declaration: □ Yes
X No

Description of Action: Amendment of the Town’s zoning ordinance to add certain definitions; amend certain existing definitions; articulating certain prohibited uses; confirming and clarifying that any uses not expressly or specifically permitted are prohibited; establishing a severability clause; legislation would prohibit gas and/or petroleum exploration or extraction in each and every Zoning District within the Town.

Location: (Include street address and the name of the municipality/county. A location map of appropriate scale is also recommended.) Throughout the Town of LaFayette, County of Onondaga, State of New York
Reasons Supporting This Determination:

(See 617.6(g) for requirements of this determination; see 617.6(h) for Conditioned Negative Declaration)

I. State and Federal Regulation and Oversight; concerns include but are not limited to:


c. A report authored by University of Oneonta Professor Ronald Bishop and others in November 2009 for former Congressman Michael Arcuri, states that “proceeding with any new projects to extract methane from unconventional reservoirs by current practices in New York State is highly likely to degrade air, surface water and ground water quality, to harm humans, and to negatively impact aquatic and forest ecosystems. Mitigation measures can partially reduce, but not eliminate, the anticipated harm.” Bishop, Ronald E. "Chemical and Biological Risk Assessment for Natural Gas Extraction in New York", (2011); available at http://flimarcellusconference.files.wordpress.com/2011/07/risk-assessment-natural-gas-extraction-1.pdf.

e. Studies or analyses of both the long-term and cumulative impacts of high volume slick water hydraulic fracturing (HVSWHF) operations on a community’s water, air, health and economy have not been completed, and no analysis of these types of impacts are included by the DEC in the Preliminary Revised SGEIS (July 2011). New York State Department of Environmental Conservation. Revised Draft, Supplemental Generic Environmental Impact Statement on the Oil, Gas, Mining Regulatory Program, (2011); available at [http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf](http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf)


g. In a letter to Commissioner Alexander B. Grannis of the New York State Department of Environmental Conservation (the “DEC”), the Onondaga County Council on Environmental Health set forth a list of unresolved issues of great concern regarding the DEC’s draft Supplemental Generic Environmental Impact Statement governing potential natural gas drilling activities in the Marcellus Shale. These concerns include the treatment and disposal of flowback water, the long term protection of private and public water supplies, and the use of water resources in the hydrofracking process. Onondaga County Health Department, Division of Environmental Health; Letter to Alexander B. Grannis, Commissioner of New York State Department of Environmental Conservation (December 23, 2009).

II. General concerns related to drilling for natural gas on the health, safety and welfare of the Town of LaFayette and its residents include but are not limited to:

a. Drilling for natural gas by its very nature has the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to drilling operations. Many of these are unavoidable, due to the large land occupation and density of well drilling required and the relatively high risk of accidents. Such negative community 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, increased demand on emergency services, increased cost to residents, 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 tourism.
b. Natural gas exploration or extraction or the storage, transfer, treatment, application to land or roadways, or disposal of natural gas exploration and production wastes occurring within the Town is likely to endanger the health, safety and welfare of Town residents through the deposit of toxins and radioactive substances into the air, soil, water, environment, and the bodies of residents within the Town. Irreparable harm to the Town’s drinking water supplies may occur. Methane contamination of groundwater in severe cases can result in safety hazards such as explosions in residences and businesses using well water. Town and residents' property could be damaged by the corrosive nature of these waters.

c. Air, soil and water contamination may occur during the different stages of natural gas exploration and extraction operations and the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and such contamination could have adverse impacts on plant, human and animal health and environmental quality. Such impacts, many already documented in other areas, will directly affect the quality of life and livelihoods of residents of the Town of LaFayette.

III. Risks to water include but are not limited to:

a. The Town of LaFayette is committed to protecting and preserving the quality and viability of its water resources including its wetlands, streams, watersheds, and reservoirs which include Jamesville Reservoir, Butternut Creek and Onondaga Creek. See Town of LaFayette Comprehensive Plan (August 2012).

b. Residents of the Town of LaFayette depend on the purity of lake or groundwater as their primary drinking water source either through private wells or public water systems. See Town of LaFayette Comprehensive Plan (August 2012).

c. Surface spills and underground migration of liquid wastes that originate from the exploration, drilling and extraction of natural gas (whether onsite or during the transportation of these products to treatment and/or disposal facilities) can occur, and such products may come into contact with and contaminate and pollute groundwater and/or soil. Experience from states in which hydraulic fracturing is active indicates that contamination of drinking water and streams is not uncommon whether it be due to poorly constructed well casings, cracked well casings, surface spills, leaking containment ponds, migration of contamination through abandoned wells, or for other undocumented or unexplained reasons. Michaels et al. 2010. Fractured Communities: Case Studies of the Environmental Impacts of Industrial Gas Drilling; available at http://www.riverkeeper.org/wp-content/uploads/2010/09/Fractured-Communities-FINAL-September-2010.pdf.

d. Water contamination has been documented in a peer reviewed paper in the Proceedings of the National Academy of Science by Dr. Stephen Osborn and others
from Duke University titled *Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing* which looked at 68 wells across Pennsylvania. The research showed levels of methane with the chemical profile of shale-gas in groundwater were 17 times higher on average in water wells located within a kilometer of active hydraulic fracturing than water wells where there was no hydraulic fracturing, and were very often above the federal safety standard for explosions. Osborn, Stephen G., et al. *Methane Contamination of Drinking Water Accompanying Gas-Well Drilling and Hydraulic Fracturing*, Proceedings of the National Academy of Sciences, (2011); available at http://www.pnas.org/content/early/2011/05/02/1100682108.full.pdf+html.

e. State University of New York at Buffalo researchers led by Tracy Bank reported that Marcellus Shale is naturally enriched in uranium and has enhanced solubility and mobility due to water-rock interactions over millions of years and hence produced water secondary to the fracking process contains unacceptably high levels of radioactivity. Bank, Tracy. *Trace Metal Chemistry and Mobility in the Marcellus Shale*, (2010); available at http://www.epa.gov/hfstudy/tracemetalgeochemistryandmobilityinthemarcellusformation1.pdf.

f. An analysis on wastewater from the gas and oil industry treated at a brine treatment facility in Pennsylvania by Dr. Conrad Volz and others from the Center for Healthy Environments and Communities at the University of Pittsburgh shows levels of barium, strontium, bromide, benzene, 2-butoxyethanol and other contaminants in the effluent entering a local creek well in excess of EPA standards for protection of human health and aquatic life. The report cites concern for those who drink the water from municipal authorities downstream as well as those who recreate in the area and are exposed to chemicals emanating from the creek either through skin absorption, inhalation of volatile compounds, or ingestion of fish taken from the creek. Volz, Conrad D., et al. *Contaminant Characterization of Effluent from Pennsylvania Brine Treatment Inc., Josephine Facility: Implications for Disposal of Oil and Gas Flowback Fluids from Brine Treatment Plants*, EPA Hydraulic Fracturing Study Technical Workshop 3, Fate and Transport, March 28-29, 2011; available at http://www.epa.gov/hfstudy/contaminantcharacterizationofeffluent.pdf.

g. Experience in Pennsylvania where hydraulic fracturing is allowed shows water and flow back fluid disposal techniques and regulations at the State level are inadequate or non-existent and that standard waste water treatment techniques are not effective when treating these toxic fluids. See generally, Urbina, Ian, February 27, March 2, and March 4, 2011 articles and supporting documentation; available at; http://www.nytimes.com/interactive/us/DRILLING_DOWN_SERIES.html] (Letter from
At the request of Congress, the United States Environmental Protection Agency is performing a study of the potential impacts of hydraulic fracturing on drinking water resources. A final draft report is expected to be released for public comment and peer review in 2014. Information regarding the study can be found at: http://www2.epa.gov/hfstudy.

IV. Risks to air quality include but are not limited to:


b. A variety of air pollutants are included in the gaseous releases associated with several point sources in the gas drilling process and with leakage from storage and transmission infrastructures. Pollutants include benzene, formaldehyde, and other aromatic hydrocarbons and hydrogen sulfide, carbon disulfide and other sulfur gases in addition to radon. Development of the Barnett Shale gas in Texas has led to high levels of air pollution, including benzene concentrations of up to 15,000 ppb in air. These concentrations are high enough to cause toxicity. Wolf Eagle Environmental, Town of DISH, Texas, Ambient Air Monitoring Analysis, Final Report (2009); available at http://townofdish.com/objects/DISH_-_final_report_revised.pdf.

c. In the Marcellus Shale region, only limited air quality monitoring has occurred to date, and the highest concentrations of benzene found are far lower than those found in Texas for the Barnett Shale, only 758 ppb. See Pennsylvania Department of Environmental Protection, 2010; Southwestern Pennsylvania Marcellus Shale Short-Term Ambient Air Sampling Report; available at http://www.dep.state.pa.us/dep/deputate/airwaste/ag/agem/docs/Marcellus_SW_11-01-10.pdf. Still, exposure to levels of chemicals such as benzene at these lower levels can pose a significant cancer risk. A recent peer reviewed study suggests a strong link between low-level chronic benzene exposure and risk of leukemia. Talbott et al. 2011. Risk of Leukemia as a result of community exposure to gasoline vapors: A follow up study. Environmental Research 111: 597-602.

d. Emissions from internal combustion engines, primarily using diesel fuel, are a significant and damaging source of air pollution associated with extraction of natural gas and petroleum, as these processes rely heavily on such engines for many aspects of the overall process (such well drilling and fracking and a high frequency of heavy truck
trips to and from the sites). A study in 2009 by Dr. A. Armendariz of Southern Methodist University (now Director for EPA Region 6) found high levels of smog-forming compounds (nitrogen oxides and volatile organic compounds, or VOC’s) in air associated with oil and gas production in the Barnett Shale region of Texas, in addition to greenhouse gases and air-borne toxic chemicals. Armendariz, Al. Emissions From Natural Gas Production in the Barnett Shale Area and Opportunities for Cost Effective Improvements, (2009). available at; www.edf.org/documents/9235_Barnett_Shale_Report.pdf Pollution from vehicle exhaust, fine particulate matter and ozone levels are known to cause a variety of health problems including asthma, chronic obstructive pulmonary disorder, cancer and other diseases. Wargo, John. The Harmful Effects of Vehicle Exhaust, A Case For Policy Change. Environment and Human Health, Inc., (2006); available at http://www.ehhi.org/reports/exhaust/exhaust06.pdf.

e. The environmental footprint for shale gas is greater than that for conventional gas or oil when viewed on any time horizon, particularly so over 20 years. Compared to coal, the footprint of shale gas is at least 20% greater and perhaps more than twice as great on the 20-year horizon and is comparable when compared over 100 years. Howarth, Robert W., Renee Santoro, Anthony Ingraffea, Methane and the Greenhouse-Gas Footprint of Natural Gas from Shale Formations, A Letter, Climatic Change (2011) 106:679-690.

f. A study which focused on air quality in the Southwestern Pennsylvania Marcellus Shale Region found natural gas constituents in the air near Marcellus Shale drilling operations including methane, ethane, propane and benzene. Lazor, Nick. Southwestern Pennsylvania Marcellus Shale Short-Term Ambient Air Sampling Report, Bureau of Air Quality, PA Department of Environmental Protection.

V. Health risks include but are not limited to:


b. Mounting evidence and analysis of hydraulic fracturing for gas extraction since its inception in the U.S. indicates that a variety of environmental and health impacts are associated with the industry. Impacts of Shale Gas and Shale Oil Extraction on the

d. New York State selected an outside health panel of three experts to review the state’s environmental study on hydrofracking. The panel is comprised of John Adgate, Chair of the Environmental and Occupational Health Department at the Colorado School of Public Health; Lynn Goldman, Dean of George Washington University’s School of Public Health and Health Services; and Richard Jackson, Chair of the Department of Environmental Health Sciences at the University of California Los Angeles’ Fielding School of Public Health. Coin, Glenn. New York State Selects Outside Panel to Review Hydrofracking Study, Syracuse Post-Standard (November 15, 2012); available at http://www.syracuse.com/news/index.ssf/2012/11/new_york_state_selects_outside.html


e. The process of high volume slick water hydraulic fracturing has been linked to chronic diseases such as respiratory ailments, neurologic impairments and the high likelihood that exposure to fracking chemicals many of which are highly toxic, can cause cancer. Gruver, Mead, Wyoming Air Pollution Worse than Los Angeles Due to Gas Drilling, Huffington Post, March 8, 2011; available at http://www.huffingtonpost.com/2011/03/08/wyoming-air-pollution-gas-drilling_n_833027.html Lustgarten, Abraham, EPA Launches National Study of Hydraulic Fracturing, Circle of Blue, March 18, 2010; available at http://www.circleofblue.org/waternews/2010/world/north-america/epa-launches-national-study-of-hydraulic-fracturing/

f. By letter dated February 12, 2013, Department of Health Commissioner, Nirav Shah, M.D. wrote to the Commissioner of the New York State Department of Environmental Conservation to inform him the Department of Health would need additional time to assess the public health impacts of hydraulic fracturing. At that time Commissioner Shah anticipated completing the Public Health Review “within a few weeks”. To the Board’s knowledge, the Public Health Review is still ongoing. New York State Department of Health, Commissioner Nirav Shah, M.D., M.P.H.; Letter to
g. A review of the potential health effects of chemicals used during natural gas operations found that only 10% of the chemical products used by the natural gas industry had no known health effects, and 90% had at least one potential health effect. Nearly half of the products contained one or more chemicals considered to be endocrine disruptors, which are chemicals that interfere with the human endocrine system. Unlike almost all other industrial processes, natural gas drilling directly introduces chemicals into the land and subsurface of the earth. The brain and nervous system can be harmed by 55% of the chemicals the industry uses. The storage, handling, accidental discharge or intentional discharge of such chemicals could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. Accidental chemical spills, discharges of toxic and hazardous materials, and flooding can threaten the quality and quantity of water supplies and resources both in the Town, posing potential public health and safety hazards. The Endocrine Disruption Exchange, *Chemicals in Natural Gas Operations, Health Effects Spreadsheet and Summary*, available at [www.endocrinedisruption.com/chemicals.multistate.php](http://www.endocrinedisruption.com/chemicals.multistate.php).

h. A 2011 study identified over 632 chemicals used in natural gas extraction; just over half (55%) are well described in the scientific literature. Of these, 75% are known irritants to the eyes, skin, respiratory and GI systems; 40-50% may be neuro-, cardio-, or renotoxic; 37% affect endocrine glands; and 25% are mutagens or carcinogens. J. Colborn T, Kwiatokowski C, Shultz K, Bachran M, (2011) Natural Gas Operations from a Public Health Perspective, *Human and Ecological Risk Assessment: An International Journal*, 17:5, 1039101056.

i. A presentation by Trevor M. Penning from the Perelman School of Medicine at the University of Pennsylvania set forth the public health issues and impacts of hydraulic fracturing including the health effects of the chemicals used in hydraulic fracturing, potential water pollution from flow-back fluid, potential air pollution, and the vulnerability of certain populations such as pregnant women and children. A study of 11 homes in Dimock, Susquehanna County Pennsylvania, impacted by hydrofracking revealed 6/11 homes having elevated Na, CH4, and Cr and 2/11 homes with elevated As. Another study of 7 residential wells in Leroy Township, Bradford County Pennsylvania found 2 wells with Arsenic and elevated Na. Dr. Penning urged the use of the “precautionary principle” with regard to hydrofracking which means: “The precautionary principle states that if an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking the action.” Penning, Trevor M., Ph.D. *Hydrofracking: Public Health Issues and Impacts*
VI. Community impact findings include but are not limited to:

a. According to preliminary results of an economic study conducted by Susan Christopherson at Cornell University which focused on areas in Pennsylvania where hydraulic fracturing is more developed found: Christopherson, Susan; Marcellus Hydro-Fracturing, What Does it Mean for Economic Development, (2011); available at http://www.greenchoices.cornell.edu/downloads/development/Marcellus/Marcellus_Preliminary_Results.pdf. see also, Christopherson, Susan. The Economic Consequences of Marcellus Shale Gas Extraction: Key Issues. CaRDI Reports, No. 14, September 2011.

i. An average of 890-1,340 truck trips per well site cause a high potential for road degradation. Without clear direction from the New York State Legislature, taxpayers in the Town of LaFayette and Onondaga County are likely to be financially responsible for resulting road repair.

ii. Bradford County, Pennsylvania saw an increase in demand on health, educational, administrative, emergency response and environmental monitoring services and an increase in public safety costs.

iii. Annual production from a shale gas well declines by about 50 percent in the first year, leaving royalty revenues to drop and does not constitute a long-term strategy for economic development in rural areas.

iv. While gas drilling regions in Pennsylvania do show job gains, a vast number of high paying jobs are not within the state and the long-term economic gain is often not positive at the pace and scale and development seen in Pennsylvania.

v. A rapid increase in activity can be expected once permitting begins based on experience from Pennsylvania, where 71 permits were granted in 2007 compared with 1,984 in 2009, which qualifies the pace of development as a boom and subject to bust.

b. Information gathered by the Tompkins County Council of Governments Task Force on Gas Drilling’s Land Value and Assessment Workgroup indicates mortgage lending is often compromised under the conditions stipulated in many gas leases resulting in a decrease in property value and an inability to sell property. Tompkins County Council of Governments Task Force; available at http://www.tompkins-co.org/tccog/Gas_Drilling/Focus_Groups/LandValues_Assessment.html.

c. A report on the impact of hydrofracking in Bradford County, Pennsylvania completed by Troy Community Hospital found, among other things: (i) an increase in
industry related injuries and exposures including foot and leg wounds, exposure to frack fluids, cellulitis or flesh eating bacteria; (ii) increased traffic and motor vehicle accidents; (iii) higher volume of calls for EMS services; (iv) negative impacts on home care services as a result of increased gas use, road disrepair, and vehicle wear, resulting in decreased productivity; (v) increased workmen’s compensation injuries; and (vi) potential contamination of water supplies related to caustic chemicals in fracking which can harm bodily internal organs. Covey, Staci, Local Experiences Related to the Marcellus Shale Industry, Troy Community Hospital. May 10, 2011.

d. A study on the potential impacts of gas drilling on the tourism industry in the three county region (Chemung, Schuyler, Steuben) served by the Southern Tier Regional Planning and Development Board found the proliferation of drilling could adversely affect the three county region’s tourism industry: (i) high occupancy rates in hotels, motels, campgrounds, and other locations as a result of the influx of gas workers could make it more difficult for visitors to find accommodations; (ii) demand for hotel rooms could lead to higher prices; (iii) the nature of drilling, its visual impacts, could mar the unique visual landscape of the southern tier. The study also concluded that the effects of truck traffic from drilling will include; (i) heavier road traffic, on highways, secondary roads, and city streets; (ii) increased air pollution; (iii) increased noise pollution; (iv) increased traffic accidents and safety risks; and (v) damage to roads, especially secondary roads. Also hunting, fishing and other outdoor recreation which contributes more than $6 billion to the New York economy annually could be negatively impacted by increased human activity, new roads, truck traffic and pollution. Rumbach, Andrew. Natural Gas Drilling in the Marcellus Shale: Potential Impacts on the Tourism Economy of the Southern Tier. 2011.; available at http://www.greenchoices.cornell.edu/downloads/development/marcellus/Marcellus_Rumbach.pdf

e. According to a study by C.J. Randall, a graduate student in the Department of City and Regional Planning at Cornell University, the burden hydrofracking places on existing transportation infrastructure is extensive. Dust, noise and road damage from industry truck travel are tops on the list of citizen complaints in areas where shale is extracted via shale gas drilling. A typical Marcellus well requires 5.6 million gallons of water during the drilling process, in almost all cases delivered by truck. Millions of gallons of liquid used in the short initial drilling period account for half of the estimated 890 to 1340 truckloads required per well site. Because of its weight, the impact of water hauled to one site (364 trips) is the equivalent of 3.5 million car trips. Moreover, local municipalities are predicted to be impacted most. Estimates regarding risk of damage to roads indicate the risks to state roads is 5% (negligible); the risk at the county level is approximately 20% (low); and the risk to the roads built by towns and municipalities is approximately 90% (high). (emphasis added); Randall, C.J. Hammer Down: A Guide to

Chemicals used in the hydrofracking process include but are not limited to Benzene, Formaldehyde, Dioxane, and Hydrochloric Acid. These chemicals are known carcinogens, highly toxic (even at small doses), and can cause damage to the liver, central nervous system, and other organs. Shelly, Tom. The Health Effects and Other Hazards of Hydrofracking, Upstate Medical University Public Health Symposium. April 13, 2011.

A report authored by Robert Oswald, a professor of molecular medicine at Cornell’s College of Veterinary Medicine and veterinarian Michelle Bamberger found that exposure to hydraulic fracturing operation may have led to dozens of cases of illness, death and reproductive issues in cows, horses, goats, llamas, chickens, dogs, cats, fish and other wildlife. Some of the case studies in the report found that in Louisiana, 17 cows died within an hour of direct exposure to hydraulic fracturing fluid with cause of death being attributed to circulatory collapse and respiratory failure. A farmer who had 140 cows exposed to hydraulic fracturing fluid saw 70 of them die and there were high incidences of stillborn and stunted calves. Oswald, Robert et al. Impact of Gas Drilling on Human and Animal Health, New Solutions: A Journal of Environmental and Occupational Health Policy, (2012), 22(1): 51-77.

In a 2012 report, researchers from Duke University and Resources for the Future studied the impact on property values from shale gas development in Pennsylvania. The study looked at all properties sold in Washington, County, Pennsylvania from 2004 to 2009, which included over 19,000 properties. The study found that the value of properties located within 2000 meters of a well-pad saw an estimated reduction in property values of nearly 24%. The study attributes the reduction in property values to the potential for groundwater contamination associated with drilling. The study found that risks from groundwater contamination “lead to a large and significant reduction in house prices” which “offset any gains to the owners of groundwater-dependant properties from lease payments or improved local economic conditions.” Muehlenbachs, Luciga et al. Shale Gas Development and Property Values: Differences Across Drinking Water Resources, Discussion Paper (July 2012).

In a paper analyzing the relationship of setbacks and percentage of surface and subsurface area available for drilling, Stanley Scobie, commenting on New York’s SGEIS, found that proposed bans, moratoria, and setbacks are proportional to the quantity of water served. In other words, water supplies in the most densely populated

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• Furthermore, the Town of LaFayette is home to exceptional agricultural soils categorized as Prime Farmland Soils, which means they have the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops.

• This legislation protects and preserves open space which is a defining element to the character of the Town and to the quality of life of its residents.

• This legislation protects and preserves the parks and recreational areas of the Town including Fred Stafford Memorial Park, LaFayette Beach Park, Bailey Park, LaFayette Nature Preserve, Jamesville Beach County Park, the Apple Festival grounds, Mason Hill Land Trust, Cherry Valley Preserve, and many other precious recreational areas.

• This legislation protects and enhances the rural community atmosphere and lifestyle of the Town as well as the aesthetic attributes of the Town, particularly Mason Hill, Bare Mountain, Tully and Butternut Valleys, Butternut and Onondaga Creeks and the many other open space areas that provide precious scenic views and natural beauty within the Town.

• This legislation recognizes the importance of the Town’s highway system and the significant cost of maintaining it by protecting it from the high volume, heavy truck traffic associated with natural gas exploration, extraction and related activities.

• This legislation preserves the functioning of local streets, while maintaining livability along local streets and roads, by restricting a use that has demonstrably adversely affected roads in Pennsylvania, where these uses are prevalent.

• This legislation acts to preserve the integrity of the Town’s environment and natural resources of which there are many including: wetlands, Jamesville Reservoir, Bare Mountain, Irish Hill, Mason Hill, Tully and Butternut Valleys, Butternut and Onondaga Creeks and natural woodlands.
• This Ordinance is consistent with the Town’s Goal of protecting its surface and groundwater resources and helps achieve the Town’s stated Implementation Measure regarding the same:

   “Ensure natural gas, and other natural resource extraction, does not harm surface or groundwater resources.”

• Groundwater is the overwhelming source of drinking water for households in the Town and the protection of the Town’s groundwater resources is an important priority of the Town. The Comprehensive Plan recognizes, in light of previous salt contamination of groundwater resources, that the prohibited uses set forth in this legislation could lead to contamination of the Town’s precious groundwater resources.

• This legislation protects valuable groundwater, surface water, farmlands, wetlands and other natural resources from harmful impacts of natural gas exploration, extraction and related activities – as is amply demonstrated by adverse impacts elsewhere.

• This legislation protects the Town’s Public Water system.

   See “Findings of Fact” set forth in Appendix A to the proposed Ordinance for additional findings.

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If Conditioned Negative Declaration, provide on attachment the specific mitigation measures imposed.

For Further Information:

Contact Person: Jackie Bush – Records – Town Clerk, Town of LaFayette
Address: Town Hall, P. O. Box 193, 2577 U.S. Route 11, LaFayette, New York 13084
Telephone Number: (315) 677-3674

For Type I Actions and Conditioned Negative Declarations, a Copy of this Notice Sent to:
Office of the Chief Executive Officer of the political subdivision in which the action will be
principally located
Commissioner, Department of Environmental Conservation, 50 Wolf Road, Albany, New York
12233-0001
Appropriate Regional Office of the Department of Environmental Conservation
Environmental Notice Bulletin, 625 Broadway, Albany, NY 12233-1750 (Type One Actions only)
via e-mail

APPENDIX A
ATTACHED TO AND FORMING A PART OF
TOWN OF LAFAYETTE ORDINANCE, BEING

An ordinance to amend “The 1970 Zoning Ordinance of the Town of LaFayette, as Amended” by Adding Certain New Definitions; Amending Certain Definitions; Confirming and Clarifying that any Uses not Expressly or Specifically Permitted are Prohibited; Articulating Certain Prohibited Uses and Establishing a Severability Clause;

The Town of LaFayette Ordinance which this Appendix A is attached, is herein sometimes referred to as “this Ordinance” or “the Ordinance.”

This Appendix A is part of the Ordinance to which it is attached for all purposes.

Section 1. Authority.

This Ordinance is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of LaFayette pursuant to Section 265 of the Town Law.

Section 2. Findings of Fact.

13. The Town of LaFayette is a community in Onondaga County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources. The Town includes 39.25 square miles of land area with .35 square miles of surface water and is located south of the City of Syracuse. It has a varied topography and a blend of rural countryside, suburban tracts and village-like settings. There is very little industry in the Town. It has a number of ponds, wetlands, creeks and streams, which are tributary to Oneida and Onondaga Lakes. Because of the Town’s topography, exceptional vistas and views are available. The predominant uses are residential and agricultural in nature, with some commercial (retail and office), primary/secondary schools, library, governmental uses and several apartment complexes.

14. Most Town residents are completely dependent upon aquifers and ground water wells for life-sustaining water. Over 80% of town properties rely upon dug or drilled wells for
potable 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. Due to its rural nature, public water is cost–prohibitive in the Town. A recent effort to bring public water to the hamlet of the Town was turned down by residents, primarily due to cost.

15. 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 its visitors.

16. 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.

17. Allowing one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance to be conducted within the Town 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 and decreased recreational opportunities.

18. If one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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 Article II, Section I of the Ordinance. 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.

19. If one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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.
20. Allowing one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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.

21. If one or more of the Explicitly Prohibited Uses described in Article II, Section I of the Town of LaFayette Zoning Ordinance 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.

22. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Article VIII of the Ordinance) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.

23. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Article VIII of the Ordinance) 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 dumpster 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.

24. The explicit proscription of the activities prohibited by Article II, Section I of the Town of LaFayette Zoning Ordinance is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws. As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

> The 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

And 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 exclusive 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. (emphasis added.)

Section 3. Purposes and Intent.

The Purposes and Legislative Intent respecting this Ordinance are as follows:

A. Purposes. This Ordinance is enacted so as to take proactive steps to protect and preserve the quality of the Town’s air and water and historic resources, and other assets, and to protect and promote the health, safety, and welfare of the Town and its present and future residents. Without limiting the generality of the foregoing, this Ordinance is intended and is declared by the Town Board to:

(1) promote the purposes of planning and land use regulation by, among other things, preserving the roads, and fire, police, and other emergency response services in the Town;

(2) promote the healthy, safety, and welfare of the Town, its present and future inhabitants, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town;

(3) protect the Town’s priceless and unique character, the preservation of which is of significant value to the inhabitants of the Town and the tourists who visit there, by protecting it from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town; and

(4) protect the Town’s irreplaceable historic, water quality, air quality, scenic and other natural resources, by protecting them from the adverse public nuisance and/or land use impacts and effects that could result if one or more of the (prohibited uses) were allowed to be conducted within the Town.

B. Declaration of Intent.

(1) Exercise of Police Power. This Ordinance is a police power, public nuisance and land use regulation designed to establish and provide for general land use regulation, environmental protection, public safety, prevention of increased traffic congestion, protection of agricultural resources, preservation of the character of the Town, protection of air quality, protection of water resources quality, prevention of noise and disturbance, protection against diminished property values, and protection of the public from nuisance and/or land use effects and impacts, resulting from the (prohibited uses)
(2) Prohibition Against Specified Solid Wastes. This Ordinance also intends to regulate, in a manner consistent with law, including without limitation, NY ECL 27-0711, and conducive to the health and welfare of the citizens of the Town, the dumping, discharging, injection, and disposal of materials herein, defined as (wastes) on lands and in bodies of water within the Town.

(3) Protection of Private Drinking Water Supplies. This Ordinance is intended to protect the drinking water supplies and is intended to supplement and enhance and is not intended to impinge upon the Safe Drinking Water Act and the Underground Injection Control Programs administered by the United States Environmental Protection Agency.

(4) Matters of Local Concern. This Ordinance is intended to and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town Board to address matters of statewide concern.

(5) Negative Externalities. This Ordinance is intended and is hereby declared to impose conditions and restrictions on the use of property that are directly related to and incidental to the use of that property, and such conditions and restrictions are aimed at minimizing or precluding the adverse impact on the Town that could result from an inappropriate use of the property that could otherwise adversely affect the comfort, peace, enjoyment, health and safety of the surrounding land.

(6) Land Use Control. This Ordinance is intended to act as and is hereby declared to be an exercise of the permissive “incidental control” of a police power 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. This Ordinance is not intended to regulate the operational processes of any business. This Ordinance applies generally and is intended to promote the interests of the community as a whole.

6. COMMUNICATIONS

A. Supervisor McConnell recognized Greg Scammell and Adrian Shute, previous Town Supervisors and thanked them both for their years of service to the Town.

B. Parade of Homes, September 7th – September 22nd, 2013 at Jamesville Grove Estates. Supervisor McConnell advised that there are numerous events scheduled including a Ribbon Cutting Ceremony on September 8th, September 9th – a 9/11 Remembrance; Ladies Nights September 12th and 19th, and LaFayette Community Night September 17th.

Marla Cohen requested the Town release funds held for the final paving coat. Supervisor McConnell advised the Cohen’s that they can be put on the Town Board Agenda for August 9th, 2013 after the final paving has been completed and inspected.
B. Nextel Lease Agreement:

Supervisor McConnell asked for an update with regard to the Nextel merge with Sprint and the Groth Road Nextel Tower. Councilman Ohstrom advised that he and John Greeley toured the property and reported that the building is in great shape and they did not see any structural problems, they were not able to go inside the building to inspect the interior; the tower looks new (galvanized steel) however there appears to be a little deterioration in the cement footing. Councilman Zajac questioned if that may be Styrofoam as that is often used in the forms when pouring cement. Ohstrom replied that it looks like that could be the case and that John Greeley has contacted a tower inspector to check it out. Councilman Doolittle asked if in the future another company may want have an interest in renting the tower. Ohstrom advised that it would definitely be an option.

Councilman Ohstrom moved and Zajac seconded the motion for Nextel to provide the Town of LaFayette with the 30 day notice and remove antennas, coax lines and batteries and radios that are located inside the equipment shelter. All other telecommunications equipment will remain including the shelter, Ice Bridge, antenna mounts and Nextel will pay a one-time payment of ($4,000.00). Motion carried 4-0.

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D. Thor Restaurant Alcohol Renewa.

Supervisor McConnell advised that James Stirner, Jr. sent a letter to the Town Board advising that he applied for the annual renewal for a license to sell alcoholic beverages. The Town Board has 30 days to object to the renewal otherwise it will automatically renew, no motion is necessary. There were no objections voiced therefore the Thor Restaurant alcohol license will automatically renew.

7. Executive Session

Supervisor McConnell advised that Project Coordinator Bill Sutliff submitted his letter of resignation as he and his wife are retiring and wish to relocate. McConnell complimented his service to the Town and advised that the Town will be looking for a replacement. He asked if anyone knows of anyone who may have an interest in being
the Town Handyman, or knows of anyone who may be interested, to have them call his office.

Councilman Doolittle moved and Zajac seconded the motion regretfully accepting the letter of Retirement/resignation of Bill Sutliff, effective September 18th, 2013 and complimented him for his services to the Town. Motion carried 4-0.

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8. REPORTS
   A. Departmental
      1. Assessors
      2. Building and Zoning Code Enforcement
      3. Dog Control
      4. Deputy Highway Superintendent Steve Robson submitted a written report and discussed the items directly relating to his report:

      Equipment: New Dodge 4500 completed and added to Town Fleet.
      Roads: Ditching operations and shoulder work will continue throughout August and September.
      Roadside mowing operations will continue throughout the month. Crack sealing was completed in preparation for Slurry sealing that will be performed on Gordon Cooper and Q-trac on August 16, 2103.
      Installation of various new and replacement driveway pipes have been completed. Sept. 1 – 20th brush pick-up will begin and be hauled to landfill and ground up for mulch for residents use in the spring.
      Parks: Mowing ops continue in parks, The Beach B/B court hydro-seeding was completed on August 15th. The LaFayette Beach pool has been drained in preparation of the winter.

      Councilman Ohstrom thanked Deputy Robson and the Highway crew for all the excellent job, extra time and work they did at the LaFayette Beach with landscaping, the retaining wall, basketball courts, etc. and advised that LaFayette Community Council is holding an Open House and Ceremony on Sept. 14th at the Beach.

5. Justice Court
   a. Monthly report submitted and reviewed

      270-total cases; $17,930.00 taken in for the month of July, 2013.
May 14, 2012 Town Board Meeting Minutes

Minutes of the Town Board Meeting held by the LaFayette Town Board on May 14, 2012 at 6:30 p.m. in the Meeting Room of the LaFayette Commons Office Building at 2577 Route 11 in the Town of LaFayette.

Present: Adrian Shute, Supervisor  
Andrew Ohstrom, Councilman  
Jerry Doolittle, Councilman  
Steven Zajac, Councilman  

Arriving Late: William McConnell, Councilman (6:45 p.m.)

Recording Secretary: Carleen LaRonde, Deputy Town Clerk

Others Present: Kevin Gilligan, Town Attorney  
John Greeley, Deputy Highway Supervisor  
Thomas Chartrand, Town Bookkeeper

1. Supervisor Shute called the meeting to order at 6:30 p.m.

2. The Deputy Town Clerk took the Roll. Councilman McConnell absent.

3. Pledge to our U. S. Flag led by Town Councilman Doolittle

4. Councilmen Doolittle moved and McConnell seconded the motion to accept Town Board Meeting Minutes of April 23, 2012 as submitted by Deputy Town Clerk. Motion carried 4-0

5. PUBLIC HEARINGS

A. Supervisor Shute opened the Public Hearing and asked for any comments. Since there were no comments, the Public Hearing on Local Law B-2012 was closed.

RESOLUTION  
LAFAYETTE TOWN BOARD  
May 14, 2012

The following resolution was offered by Councilor Doolittle, who moved its adoption, seconded by Councilor Ohstrom, to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, proposed Local Law B-2012, to impose a nine (9) month moratorium on Hydraulic Fracturing and/or Hydrofracking, or until
the Town of LaFayette enacts comprehensive legislation regulating Hydraulic Fracturing and/or Hydrofracking, whichever shall first occur in the Town of LaFayette, was presented and introduced at a regular meeting of the Town Board of the Town of LaFayette held April 23, 2012; and

WHEREAS, a public hearing was held on said proposed Local Law No. B-2012 on May 14, 2012 by the Town Board of the Town of LaFayette and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of LaFayette in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, at its April 23, 2012 meeting the Town Board determined that this proposed legislation is a Type II action for purposes of SEQR, thus concluding the environmental review process; and

WHEREAS, it is in the public interest to enact said Proposed Local Law No. B-2012.

NOW, THEREFORE, it is

RESOLVED AND DETERMINED, that the Town Board of the Town of LaFayette, Onondaga County, New York, does hereby enact Proposed Local Law No. B-2012 as Local Law No. 1-2012 as follows:

TOWN OF LAFAYETTE
LOCAL LAW NO. 1-2012

A local law “Effecting a Moratorium and Prohibition Within The Town of LaFayette on Natural Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, And Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes.”

Be it enacted by the Town Board of the Town of LaFayette, as follows:

Section 1. TITLE

This Local Law shall be known as the:
"Moratorium on and Prohibition of Gas And Petroleum Exploration And Extraction Activities, Underground Storage Of Natural Gas, and Disposal Of Natural Gas Or Petroleum Extraction, Exploration, And Production Wastes in the Town of LaFayette."

Section 2. AUTHORITY AND INTENT; FINDINGS; PURPOSE

A. The Town Board of the Town of LaFayette hereby enacts this Local Law pursuant to the authority described at Section 1. of Appendix A attached hereto, which Appendix A is hereby incorporated and made a part of this Local Law for all purposes by this reference.

B. The Town Board has found, determined, and made the declarations of findings set forth at Section 2. of Appendix A attached hereto.

C. The Purposes underlying the Town Board’s passage of this Local Law, as articulated, found, and declared by the Town Board, are set forth at Section 3. of Appendix A attached hereto.

Section 3. DEFINITIONS

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

Agriculture Use. Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section § 301 of the New York State Agriculture and Markets Law). Board of Appeals. The Zoning Board of Appeals of the Town.

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 box, 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 whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility. A site where any Natural Gas Exploration And/Or Petroleum 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 non-combustible, 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.
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.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. 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: (a) 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; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) 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; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) 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: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) 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, without any intention of further use.

Natural Gas And/Or Petroleum Support Activities. Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility; (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.
Natural Gas Compression Facility. Those facilities or combination of facilities that move natural gas or petroleum 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 non-methane 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.

Non-Regulated 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.

Person. Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

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 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 NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US 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.

Town. The Town of LaFayette, Onondaga County, New York. Town Board --- The Town Board of the Town.

Transmission Line --- A pipeline that transports oil, 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.

Section 4. MORATORIUM AND PROHIBITION.

A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas And/Or Petroleum Exploration Activities; (ii) any Natural Gas And/Or Petroleum Extraction Activities; or (iii) any Natural Gas And/Or Petroleum Support Activities.

B. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

C. The moratorium and prohibition set forth above in Sections A. and B. of this Section 4. are not intended, and shall not be construed, to: (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit 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 (z) prevent or prohibit 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, so long as such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.

D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is nine (9) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

E. This moratorium and prohibition shall apply to all real property within the Town.

F. Under no circumstances shall the failure of the Town Board of the Town, the Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action upon any application for a permit, zoning permit, special permit, zoning variance, building permit, site plan approval, subdivision approval, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. PENALTIES.

A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars ($1,500) or imprisonment for not more than 10 days, or both, for the first offense. Any subsequent offense within a three month period shall be punishable by a fine of not more than
Two Thousand Five Hundred Dollars ($2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.

B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.

C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court.

Section 6. ‘GRANDFATHERING’ OF LEGAL, PRE-EXISTING NON-CONFORMING USE

Notwithstanding any provision hereof the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

A.1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A. 1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.

B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A. 1. of this Section 6, or upon any other substantive cessation of Natural Gas and/or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A. 1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.

C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A. 1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A. 1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. INVALIDITY OF ANY CONFLICTING APPROVALS OR PERMITS.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of LaFayette when or to the extent that such permit or
approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

Section 8. HARDSHIP USE VARIANCE.

The Town Board of the Town hereby retains the authority to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Town Board without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

A. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Town Board that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the neighborhood; and (iv) the alleged hardship has not been self-created.

B. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Town Board shall examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the applicant has clearly demonstrated, by detailed "dollar and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).

C. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Town Board finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.

D. Essential Character of the Neighborhood. In making its determination of whether the proposed development project will alter the essential character of the neighborhood, the Town Board shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential, agricultural and historic character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (viii) whether the applicant will use a style of development that will result in degradation to the air quality, water quality and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Town Board shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (x) pose a threat to the public safety, including public health, water quality or air quality, (y) cause an extraordinary public expense, or (z) create a nuisance.
E. **Self-Created Hardship.** The Town Board may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Town Board grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Town Board deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**Section 9. SEVERABILITY.**

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

**Section 10. SUPERSEeding INTENT AND EFFECT.**

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supersede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; §274-a, §274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Ordinance of the Town of LaFayette; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of LaFayette.

**Section 11. EFFECTIVE DATE.**

This Local Law shall take effect immediately upon filing with the New York Department of State.

**APPENDIX A**

ATTACHED TO AND FORMING A PART OF
TOWN OF LAFAYETTE (NY) LOCAL LAW NO. B OF THE YEAR 2012
known as:

"Moratorium on and Prohibition of Gas and Petroleum Exploration
and Extraction Activities, Underground Storage of Natural Gas,
and Disposal of Natural Gas or Petroleum, Exploration, and Production
Wastes in the Town of LaFayette"

The “Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas in the Town of LaFayette and Disposal of Natural Gas of Petroleum Extraction, Exploration, and Production Wastes” to which this Appendix A is attached is herein sometimes referred to as “this Local Law” or “this Law.”

This Appendix A is a part of the Local Law to which it is attached for all purposes.

Section 1. 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 LaFayette 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 §84 (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.

Section 2. Findings of Fact.

1. The Town of LaFayette is a community in Onondaga County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, and scenic and other natural resources. The Town includes 39.25 square miles of land area with .35 square miles of surface water and is located south of the City of Syracuse. It has a varied topography and a blend of rural countryside, suburban tracts and village-like settings. There is very little industry in the Town. It has a number of ponds, wetlands, creeks and streams, which are tributary to Oneida and Onondaga Lakes. Because of the Town's topography, exceptional vistas and views are available. The predominant uses are residential and agricultural in nature, with some commercial (retail and office), primary/secondary schools, library, governmental uses and several apartment complexes.

2. Most Town residents are completely dependent upon aquifers and ground water wells for life-sustaining water. Over 80% of town properties rely upon dug or drilled wells for potable 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. Due to its rural nature, public water is cost-prohibitive in the Town. A recent effort
to bring public water to the hamlet of the Town was turned down by residents, primarily due to cost.

3. 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 its visitors.

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 4 of the 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 and decreased recreational opportunities.

6. If one or more of the activities prohibited by Section 4 of the 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 4 of the 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 4 of the 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 4 of the 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 4 of the 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 3 of the 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 3 of the 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 dumpster 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 4 of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial uses is a legitimate goal of land use laws. There is no question that 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):

> The 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

And see also Matter of Germatt 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 exclusive 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. (emphasis added.)

Section 3. Purposes. The purpose of the Local Law is to enable the Town of LaFayette 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 4 of the 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 of the nine (9) months duration, 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 LaFayette and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.
The question of the adoption of the foregoing order was duly put to a vote and, upon roll call, the vote was as follows:

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<thead>
<tr>
<th></th>
<th>Councilman</th>
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<th>Absent</th>
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<tbody>
<tr>
<td>William McConnell</td>
<td>Councilman</td>
<td>Voted</td>
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<tr>
<td>Steven Zajac</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
</tr>
<tr>
<td>Gerry Doolittle</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
</tr>
<tr>
<td>Andrew Ohstrom</td>
<td>Councilman</td>
<td>Voted</td>
<td>Yes</td>
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<tr>
<td>Adrian Shute</td>
<td>Supervisor</td>
<td>Voted</td>
<td>Yes</td>
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The foregoing resolution was thereupon declared duly adopted.

DATED: May 14, 2012

B. Supervisor Shute opened the Public Hearing on the Annual 2011 MS-4 Report and asked for comments. There were no comments and the Public Hearing was closed.

Councilmen Ohstrom moved and Zajac seconded the motion to accept the 2011 Annual MS-4 Report. Motion carried 4-0

6. COMMUNICATIONS

Councilmen Ohstrom moved and Zajac seconded the motion to authorize payment of bills prior to audit for those attending 2012 Annual Planning Symposium. Motion carried 4-0

7. SPECIAL REPORTS

8. REPORTS

A. Departmental
   1. Assessors
   2. Building and Zoning Code Enforcement
   3. Dog Control – Supervisor Shute said there was no restrictions on the amount of dogs you can have. Someone in the Town has 11 pit bulls.
   4. Highway Superintendent
      Mr. Greeley submitted a written report and discussed the items directly relating to this report:
      a. The department continues to pick up roadside brush.
      b. Applewood Estates and Mondore Drive have been crack-sealed in preparation of micro paving.
      c. Almost finished with work on the Clark grader, and most of sanding equipment is off and stored at landfill for the summer.
      d. Mowing and weed-eating will continue throughout the summer.
      e. New planter boxes that the YCIP group made have been picked up and delivered to the department for placement and planting.
f. Dump Days was subdued this year. Tire and steel amounts were down. E-waste intake was moderate and document shredding was good. There was a large volume of household furniture. Refrigerators and air conditioners were also down.

g. Mr. Greeley requested approval to attend the 2012 Cornell Highway School to be held June 11 and 12, 2012. Registration would be $100 and hotel stay $140.

Councilmen Ohstrom moved and Doolittle seconded the motion to authorize the Highway Superintendent Greeley to attend Cornell Highway School, June 11-12, 2012 and pay registration and hotel expenses. Motion carried 5-0

5. Justice Court

6. Library Director

7. Recreation Director

8. Tax Collector
   a. Mr. Chartrand stated he had received a final check.

9. Town Clerk
   a. Clerk’s Report – April 1 – April 30, 2012

10. Town Supervisor
    a. Monthly Statement of Supervisor for April 2012
    b. Supervisor’s Monthly Report for April 2012

Councilmen Doolittle moved and Zajac seconded the motion that a transfer of $28,000 be made since PILOT and Sales Tax have come in. Motion carried 5-0

B. Committees
   1. Community Development
      a. Supervisor Shute spoke about needing a person to replace Phil DeSaw. Discussion ensued with comments from Mr. Chartrand asking if the person would be full-time or temporary. Supervisor Shute responded that it would be a seasonal position for the parks and beach but would cover handyman. A resume has been submitted to the Board for review.
      b. Councilman McConnell said he spoke to Jim Moltion. Mr. Moltion is interested in writing a community blog and linking it to the Town’s website. Also, the Odd Fellows would like to start a mentoring program for students at no charge. He will meet with Mr. Moltion regarding the development of these two items.
      c. The Community Days will be held June 2nd at Stafford Park.

Councilmen McConnell moved and Doolittle seconded the motion that the Town will support the Community Days in the amount of $1500. Motion carried 4-0-1 (Councilman Ohstrom abstained)

d. Supervisor Shute stated he had met with Dave Skeval regarding the soil samples, survey trees for windbreak. There will be fifty (50) 10 foot
Norway spruce. Need to get with John Greeley. It will be necessary to get three (3) quotes for the trees.
e. Two days ago we received a grant for $25,000 for LaFayette Beach 2013 to fix buildings and will need 25% in-kind service.
f. Trees around fence at park. Mr. Greeley will look at for possible spraying of weeds and trees. Some trees are doing well. Supervisor Shute will join Mr. Greeley to check them out.

2. Emergency Response
3. Employee Policies and Benefits
4. Environmental and Conservation Advisory Board
   a. Introduction Hydrofracking Moratorium

Councilmen Doolittle moved and Ohstrom seconded the motion to adopt Local Law No. B-2012. Motion carried 5-0

Further discussion continued regarding a committee to be established for the hydrofracking. Attorney Gilligan stated the committee must be active during the nine-month moratorium and that there should be an odd number on the board, suggesting three. It was agreed to establish a committee.

Councilmen McConnell moved and Zajac seconded the motion that a three-person committee to research hydrofracking be established, appointing Chair Jerry Doolittle, Co-Chair Andrew Ohstrom plus one other member. Motion carried 5-0

5. Highway
6. Physical Plant
   a. Councilman Doolittle submitted a resume for a part-time handyman. There was discussion regarding a candidate for the position. Supervisor Shute said there was need of a motion to authorize employment.

Councilmen Doolittle moved and Zajac seconded the motion to appoint a Physical Plant Deputy. Motion carried 5-0

b. Councilman Doolittle stated that there are ten windows in the Town Office building that have lost their seal and need to be replaced. Comfort Windows has quoted to replace six of those windows for a total of $300 and four of the windows at $225. Also, to purchase five screens for some windows Comfort quoted $17.39 each. Since the total is under $725, no authorization is needed.
c. Signs at the parks designed in color, sample pictures were available. Signs would cost $260 each and five would be needed — 3 at Stafford, 1 at Beach, 1 at Bailey. Cost doesn’t include installation. No estimates yet from YCIP (summer project) to build posts, roof. Optimists will erect. Total quote is $1300. Mr. Chartrand suggested Board would need a second quote.
Councilmen Zajac moved and McConnell seconded the motion to pay invoice to C-C-F prior to voucher submission. Motion carried 5-0

d. Flower boxes – 23 paid sponsors and 18 boxes are already done. Garden Club to fill dirt boxes. Signs have been printed and Councilmen Doolittle and Ohstrom will attach signs to boxes. All sponsors will have a week to fill with flowers.

7. Recreation and Youth
8. Safety
9. School District Liaison
10. Service Awards
   a. Councilman McConnell discussed service award for David Molton.

Councilmen Zajac moved and Ohstrom seconded the motion to approve a LOSAP service award payout in the amount of $50 to David Molton. Motion carried 5-0

11. SOTS and OCRRA Liaison
12. SPDES – Annual Report

Councilmen McConnell moved and Doolittle seconded the motion to send SPDES Annual Report to DEC. Motion carried 5-0

9. LITIGATION & OTHER LEGAL MATTERS
10. UNFINISHED BUSINESS & ACTIVE PROJECTS
11. NEW BUSINESS
12. Suggestions for improvement and positive contributions
13. Executive Session (if needed)
14. Motion to audit and pay bills.

Councilmen McConnell moved and Zajac seconded the motion to audit and pay bills. Motion carried 5-0

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<thead>
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<tr>
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<td>Highway Fund</td>
<td>1431 – 1454</td>
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<td>1386 &amp; 1516</td>
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<td>Trust &amp; Agency</td>
<td>1517 - 1519</td>
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<tr>
<td>Community Development &amp; Capital Fund</td>
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</table>
Councilmen Ohstrom moved and McConnell seconded the motion to adjourn the meeting. Motion carried 5-0.

The Regular Town Board Meeting was adjourned at 7:38 p.m.

Respectfully submitted,

Carleen LaRonde
Deputy Town Clerk