

## Town of Rensselaerville

### PROPOSED LOCAL LAW NO. 3 OF THE YEAR 2011

A Local Law entitled “Gas Drilling Moratorium Law of 2011 of the Town of Rensselaerville”

A local law establishing a one year moratorium on applications, approvals or drilling for natural gas in the Town of Rensselaerville.

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

Section 1. Title:

This law shall be known as the Gas Drilling Moratorium Law of 2011 of the Town of Rensselaerville.

Section 2. Purpose and Intent:

The purpose of this law is to establish a one-year moratorium to temporarily suspend the administrative review, approval process and/or drilling activities associated with the production of natural gas on lands located in the Town of Rensselaerville for either new or pending proposals or activities regarding gas drilling. Pursuant to the statutory powers vested in the Town of Rensselaerville to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Rensselaerville hereby declares a one year moratorium on the drilling for or extraction of natural gas within that subterranean area known as the Marcellus Shale or any other shale deposits located on or under land in the Town of Rensselaerville by the process commonly known as high-volume hydraulic fracturing.

The Town Board is aware of the current controversy surrounding the process of high-volume hydraulic fracturing. It realizes that there may be a number of reasons to support the use of that process, but that there have also been many issues of concern raised by persons opposed to it. In addition, the Town Board is very concerned regarding issues about such process that may have a significant negative effect on the Town’s water supply, its roads and safety due to the high volume of truck traffic such process generates, property values, the Town’s community character and the quality of life of its residents.

The Town Board is also aware that the State of New York is currently evaluating this process and its effect on the environment and that no final determination has been made by the State as to how this process will be regulated. The current State ban on this drilling process may expire soon and the Town Board wants to have the time necessary to investigate the issues involved before and after evaluation of how any State regulation may affect the Town of Rensselaerville. The Board knows that a determination of the policy that should be in effect in Rensselaerville concerning this issue will involve reconciliation of scientific and engineering information not within the usual expertise of the Board. This policy may involve the affect of increased truck traffic on the rural roads , reduction of property values within the Town, and the question of whether the extraction of natural gas by the process of high-volume hydraulic fracturing within the Town is compatible with the Town's community character and the Comprehensive Plan of the Town. The Town Board of the Town desires to address, in a careful manner, the question of if, and under what circumstances, the process of hydraulic fracturing should be allowed in this Town. The Town Board will now proceed in the process of considering various options relating to this issue.

The Town Board finds and determines that it needs the period of time covered by the moratorium imposed hereby in order to investigate and carefully study the question, draft proposed amendments to the Town Code, make appropriate changes to the draft, schedule and hold the required public hearing on the Local Law, perform an appropriate environmental review of the Local Law, comply with applicable provisions of law, adopt the Local Law, and file a copy of the Local Law, as adopted, with the Secretary of State of the State of New York.

### Section 3. Authority:

This moratorium extension is enacted by the Town Board of the Town of Rensselaerville pursuant to its authority to adopt local laws under the New York State Constitution Article IX, the Town Law and section 10 of the Municipal Home Rule Law.

### Section 4. Moratorium Imposed:

For the period of one (1) year immediately following the effective date of this local law, there is a moratorium on all applications or activities on or under land that would have as the result the drilling for or extraction of natural gas within the Town of Rensselaerville from that subterranean area known as the Marcellus Shale or any other shale by the process known as hydraulic fracturing.

During the time periods in which the moratorium remains in effect, no approvals, permits, actions or decisions shall be made or issued by any Board or official of the Town of Rensselaerville with respect to any such applications for gas drilling. This moratorium shall apply to all such applications, whether pending or received prior to the effective date of this law. No such applications seeking approvals or permits for any such activities shall be accepted by any Board or official of the Town of Rensselaerville and no person, company, entity of any kind shall engage in such drilling activities for natural gas while this law remains in effect.

#### Section 5. Effect of Moratorium:

While this Local Law remains in effect, no Board, body or official of the Town shall accept for review, continue to review, hold a hearing upon, make any decision upon, or issue any permit or approval upon any application or proposal for the uses, projects or developments set forth in Section 4 above. Any statutory or locally-enacted time periods for processing and making decisions on all aspects of the aforesaid applications are hereby suspended and stayed while this Local Law is in effect. No person, corporation, or other entity shall undertake any site preparation, including but not limited to clearing, grading, and filling, or construction activities, with respect to any application, proposed land use, subdivision, or development that is subject to this moratorium.

#### Section 6. Enforcement:

This local law shall be enforced by the Code Enforcement Officer of the Town of Rensselaerville or such other individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual to advise the Town Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to such enforcement.

#### Section 7. Violations:

Any person, firm, entity or corporation violating any of the provisions of this local law shall be guilty of an offense and upon conviction thereof, shall be subject to civil penalties in the amount of one hundred dollars (\$100.00) for each day such violation exists and/or an action for injunctive or equitable relief.

#### Section 8. Supersession:

To the extent that this local law is inconsistent with any state statute or regulation, it is the intent of this law to supersede such statutes or regulations. This supersession applies with respect to: (i) Town Law § 268 regarding the imposition of civil penalties; (ii) Town Law § 274-a with

respect to the time frames for processing applications for site plan review, (iii) Town Law § 274-b with respect to the procedures and time frames for processing applications for special use permits, and (iv) Town Law § 267 et. seq. with respect to the time frames for processing area and use variances, appeals or interpretations.

Section 9. Severability of Provisions:

Should any section or provision of this local law be declared null, void, voidable, or invalid, such finding shall not affect the validity of the remaining portions of this local law.

Section 10. Effective Date:

This local law shall take effect upon filing with the Secretary of State of the State of New York.

End of Law

## November 2011 Town Board Minutes Summary

(Continued from page 11)

A motion was made by Supervisor Dermody to accept the report of the Water/Sewer Committee; 2<sup>nd</sup> by Councilman Kudlack. *Motion Carried. Ayes (4) Dermody, Bolte, Cooke, Kudlack; Nays (0)*

### **REFUSE/RECYCLING:**

Recycling Coordinator Whitbeck reported the following for the month of October 2011: Green Fiber - 11.28 tons, Rensselaer Iron & Steel- 3.8 tons, Tires - 7, City of Albany Landfill - 58.85 tons, Sierra Fibers - 4.48 tons, and Oil -- 72 gallons. Today he had a meeting with the City of Albany and County Waste and Sierra Fibers.

A motion was made by Supervisor Dermody to accept Recycling Coordinator Whitbeck's report; 2<sup>nd</sup> by Councilman Kudlack. *Motion Carried. Ayes (4) Dermody, Bolte, Cooke, Kudlack; Nays (0)*

### **CURRENT EVENTS:**

NONE

### **OLD BUSINESS**

- **LOCAL LAW NO. 4 OF THE YEAR 2011, A Local Law extending the time for filing renewal applications for exemptions authorized by RPTL s467**

**Whereas**, the Town Assessor, Jeffry Pine, has suggested that the Town Board of the Town of Rensselaerville provide authority for the Town Assessors to accept renewal applications for senior exemptions that are not timely filed on or before the taxable status date as many seniors forget to file such applications by that date; and

**Whereas**, the Town Board agrees that senior property owners should be able to renew exemption applications if they miss the early date for submission; and

**Whereas**, a proposed local law that grants authority for the Town Assessors to accept renewal applications for senior exemptions up until grievance day (the maximum time allowed by law) was introduced by the Town Board on October 11, 2011, and a public hearing on said proposed law has been held;

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The public hearing on proposed Local Law No. 4 of 2011 has been duly held and closed prior to the introduction of this Resolution and said hearing provided those who wished to be heard regarding said proposed Law a full and fair opportunity to be heard.
2. The Town Board determines that the adoption of the proposed Local Law No. 4 of 2011 is an action that is defined in the State Environmental Quality Review Act (SEQRA) as a Type II action and, as such, no further environmental review is required.
3. The Town Board adopts Local Law No. 4 of 2011, regarding the authority for the Town Assessors to accept renewal applications for senior Exemptions up until May 1st of each year, and hereby orders that the Town Clerk and Town Attorney complete the filing form and file Local Law No. 4 of 2011 with the Secretary of State's office as required by law.

Upon motion made by Supervisor Dermody, seconded by Councilman Bolte, the foregoing Resolution was duly adopted by the Town Board on November 10, 2011 by vote of a majority of its members as follows:

Councilwoman Cooke asked, how come in the beginning it says up until Grievance Day and down here it says May 1st?

Supervisor Dermody, it was discussed that Grievance Day is too late. The State laws allows up until Grievance Day, we are limiting it to May 1<sup>st</sup>.

A roll call vote was taken with the following results:

Councilman Bolte-AYE; Councilwoman Cooke-AYE; Councilman Kudlack-AYE; Supervisor Dermody-AYE

- **LOCAL LAW NO. 3 OF THE YEAR 2011 - A Local Law entitled "Gas Drilling Moratorium Law of 2011 of the Town of Rensselaerville.**

Supervisor Dermody mentioned that we held the Public Hearing on the Proposed Law, we had 6 or 7 speakers, the majority of who is in favor of the Moratorium.

**Whereas**, the Town Board of the Town of Rensselaerville is increasingly concerned about the process of extracting natural gas by hydraulic fracturing (aka hydro-fracking) since the Town has shale deposits that may be targeted for such extraction; and

**Whereas**, Town Board members have been following the controversy on such process and understands it is a complex issue that has yet to be resolved by New York State; and

**Whereas**, since the Town Board will need time in which to investigate and study the issues involved as well as evaluate the State's decision and regulations regarding this gas drilling process, the Town Board believes that a one-year moratorium is necessary in order to protect the health, safety, and general welfare of the residents of the Town of Rensselaerville for the reasons also set forth in section 2 of proposed Local Law No. 3 of 2011; and

**Whereas**, the Town Board introduced a law as Local Law No. 3 of 2011 that proposes to establish a moratorium on the drilling for extraction of natural gas and a public hearing was scheduled for October 6, 2011, on the proposed law; and

(Continued on page 13)

## October 2011 Town Board Minutes Summary

(Continued from page 12)

**Whereas**, the proposed Local Law No. 3 was referred to the Albany County Planning Department pursuant to the General Municipal Law and said Department determined that the proposed law did not affect County plans and was a matter of local consideration; and

**Whereas**, Albany County Planning Department also provided advice as to addressing review procedures and criteria for such uses which the Town Board will take under consideration and it also offered to provide research material on this subject which the Town Board appreciates and will make use of during the study process;

**NOW, THEREFORE, BE IT RESOLVED** as follows:

1. The public hearing on proposed Local Law No. 3 of 2011 has been duly held and closed on October 6, 2011, and said hearing provided those who wished to be heard regarding said proposed Law a full and fair opportunity to be heard.
2. The Town Board determines that the adoption of the proposed Local Law No. 3 of 2011 is an action that is defined in the State Environmental Quality Review Act (SEQRA) as a Type II action and, as such, no further environmental review is required.
3. The Town Board adopts Local Law No. 3 of 2011, regarding the establishment of a one-year moratorium on any natural gas projects and applications throughout the Town.
4. The Town Board hereby orders that the Town Clerk and Town Attorney complete the filing form and file Local Law No. 3 of 2011 with the Secretary of State's office as required by law.

Upon motion made by Supervisor Dermody, seconded by Councilman Kudlack, the foregoing Resolution was duly adopted by the Town Board on November 10, 2011 by vote of a majority of its members as follows:

A roll call vote was taken with the following results:

Councilman Bolte-AYE; Councilwoman Cooke-AYE; Councilman Kudlack-AYE; Supervisor Dermody-AYE

The Moratorium will take effect after filing with the State.

A Special Meeting will be set up for the purpose of interviewing all candidates interested in being on a committee to investigate the hydrofracking issues.

**FEMA:** Supervisor Dermody called the Association of Towns and spoke with Attorney Murray Jaros, explained the situation, and he told her that legally she was doing the right thing by doing nothing until we had confirmation from FEMA that they would reimburse us the expenses. Supervisor Dermody also spoke with Mitch Morris from the NYS Office of the State Comptroller legal affairs office and Attorney Catalano.

Supervisor Dermody, this is a unique situation with no clear directive; it is a gray area in law. It is something that is out of the norm and no matter what we decide, she has misgivings on one side or the other -- either the people in the effected area will rightfully be upset because we do nothing to protect their property or other taxpayers will be upset because they see our action of spending taxpayer dollars to improve personal property. We could consider this as a Town Board project based on the fact that previous restoration work was done by the Town as a result of a previous disaster and the Town does have a responsibility to protect, not improve, private property. She spoke with Mr. Morris and she has more research to do. Protection of property is not sufficient for Town benefit unless we can chalk it up to something that has an effect on a Town asset. However, we could look at it that not doing the work could cause perhaps septic drainage into the Creek because of the flood waters, stagnation of water, etc. We have to look at whether it benefits the few, not the many. We have to have justification as a Town function. There is an opinion that she pulled off the website and highlighted some issues. Supervisor Dermody is going to have Attorney Catalano contact Mitch Morris because they can talk "legalese" together.

Supervisor Dermody would like to move forward with this proposal. Our procurement law says that any project over \$20,000.00 requires going out for public bid, the State Law sets that limit at \$35,000.00. We are pretty sure that the corrective restoration there is not going to cost that much money. If the Town Board would consider suspending the Town's Procurement Law for this issue only, we could put out a request for proposals and by doing that we avoid the time issue of having to get it into our official newspaper. If we put it out as a request for proposals, we could not accept any proposal that exceeded \$35,000.00. Hopefully it would come in less than that.

Supervisor Dermody read the Request of Proposals which comes from the DEC Permit that we are in the process of getting transferred from Vincent's name to the Town. The Town will provide materials.

Supervisor Dermody has a list of contractors to send the Request for Proposal to.

Where do we get the money? We have \$90,000.00 coming back to the General Fund from the Sewer Fund that never got taken out from 2009. This proposal, if we go forward, is only based on the conversation that Attorney Catalano has with Rich Morris together regarding the appropriateness of this.

Councilwoman Cooke, there was a diagram from the Army Corps of Engineers. Is that going to be there?

Supervisor Dermody, that is listed on the first part of this.

Councilman Bolte, who is on the list?

Supervisor Dermody, James Maloy, Inc, Fraser & Associates, Borwegen's, Kenny Bell, Ed Reinhart, Mark Overbaugh.

(Continued on page 14)