

York Town Work Session
May 29, 2013
7:00 pm

Present: Gerald L. Deming, Supervisor, Council Members: Lynn Parnell,
Frank Rose, David Deuel and Norman Gates

Others: Town Attorney James Campbell (Kruk & Campbell), Henry (Steele) Fuller (Steering Committee), Patricia Gardner, Melissa Alber-Chase, Grayce McLaughlin and Lee Gratwick.

Supervisor Deming opened the Work Session at 7:00 p.m. stating the purpose of the scheduled session was to review conclusions and recommendations of the York Steering Committee's plan on Zoning for hydrofracking in the Town of York.

Mr. Deming invited Town Attorney James Campbell to give a legal overview of the findings to this point. Mr. Campbell's initial remarks were that the Steering Committee worked hard and put a lot of thought and effort into a very complicated task at hand and that the Town should be thankful for their undertaking.

Mr. Campbell stated that essentially the Town will need to establish "their own identity" in terms of setting policy and what they wish to achieve, mentioning that there are "a set of lens" for which we all can look at the findings and perceive them differently. From a legal standpoint, Mr. Campbell was able to convey for those in attendance the terminology included in the Steering Committee's findings. He encouraged the Town Board to make a resolution in the near future acknowledging receipt but not acceptance of the current document as the process of review will be ongoing until the final product/facts with regards to recommendations is satisfactory to all in the community.

Mr. Campbell brought the group up to date by giving a brief legal background for ongoing cases related to hydrofracking from the surrounding areas such as the Town of Avon, Dryden and Middlefield and the challenges they continue to face. He reminded the group that Lenape Resources Corp. has and continues to receive a tremendous amount of support from the natural gas industry to encourage litigation and further their case which makes it extremely difficult for a small town to defend. Upon briefing the group as to the status of the Lenape suit against the neighboring Town of Avon, Mr. Campbell mentioned that the case is currently in the next level of review of the appeal process in the 4th Department. Specifics of the case were discussed and Mr. Campbell explained that the legal process will continue in the court system for some time.

Supervisor Deming interjected that in his opinion, towns that have a ban currently in place regarding hydrofracking seem to have the upper hand. Mr. Campbell agreed and proceeded to inform the group at great length the need for regulations but first clarified what constitutes a regulation from a Zoning

perspective. Mr. Campbell reiterated that regardless of how welcoming a community might perceive the industry, there will be challenges.

Using the Steering Committee's Plan as a guide for what falls under a Zoning category Mr. Campbell reminded the group that although a grey area, interpretations are subjective based upon the needs of a town/residents. Our Town has to identify our personality in relation to what the community needs and it is our responsibility to represent those needs as difficult as it may be. Referencing the issue of hydrofracking, Mr. Campbell stated that he has never seen such a malleable issue with the opinions being polar opposites while being compelling at the same time.

Throughout the evening Mr. Campbell referred to the many sections of the Steering Committee's recommendations and offered his interpretation from a legal vantage point. Further comments, discussions and questions were posed in detail associated with hydrofracking with regards to zoning regulations, compressor stations, site plan reviews, farming, aquifers, mapping, generated waste, windmills and health concerns. Coordination from various agencies such as DEC and Livingston County Planning in relation to the road use was another topic of interest. Despite there being an enormous amount of material, Mr. Campbell reminded the Board to carefully look at the language and definitions in the document before they took action as hydrofracking is a hot button issue.

Singling out Section 618, Supervisor Deming commented that quite a bit of the content is already in effect in the Town's current Zoning. He stated that in his opinion, DEC and the State of New York should not be able to regulate what we do here in the Town of York. Mr. Campbell reiterated that although we may know what is best for our community, the industry does not believe that you do and will argue issues ultimately leading to litigation, which is something we would want to avoid.

Councilman Deuel clarified to the group that drilling can only be permitted in an Ag or Industrial zoned district and posed several questions to our attorney in regards to special use permits. Noise and set backs were also points of discussion. In addition, Mr. Deuel pointed out that Food and Agriculture are currently exempt from the many regulations that others currently are required to adhere to.

Going forward, the Board asked Mr. Campbell for his professional opinion in terms of timing and what steps would be next. Potential options would be to accept the documented recommendations, do nothing, or implement a Ban. Mr. Deuel suggested that we accept the document, but with adjustments while going to the public for a hearing. Taking our time to enact on it would be beneficial for the parties as all agreed that they wanted the best for our community.

Supervisor Deming asked about legal procedures in terms of timing and adopting of policy. Mr. Campbell provided the Board with a clear timeline of how and

when a document can be delivered and put in place. Mr. Deming's personal opinion is that the Town needs to go forward with the review of the Steering Committees findings. It was agreed that the Town will schedule another work session while preparing a number of questions or concerns for Mr. Campbell to review and advise. Mr. Campbell mentioned that it may be helpful to enlist fellow Attorney Andrew Emborsky as it could be beneficial to obtain another perspective on the subject matter.

At this time, Grace McLaughlin asked Mr. Campbell for clarification about bans in the Towns of Dryden and Middlefield. He replied that both courts upheld the right to enact bans for both Towns. Home Rule was explained in reference to the legal perspective. Ms. McLaughlin posed another question to Mr. Campbell as to who can the farmers turn to for protection from the industry of this size. Councilman Deuel added that having an advisory committee in place would help to oversee such situations. He provided copies to all in attendance of a draft for a proposed "Agricultural Advisory Committee Law of the Town of York" recognizing the importance of the agricultural industry and its vital economic base. The proposed committee would be comprised of five appointed members from the agricultural community and one resident of the Town not associated with agriculture. The purpose is to create a mutually beneficial relationship between the use of land and buildings while wisely managing the Town's natural resources through modern farming practices as another level of review. The group was receptive of Mr. Deuel's proposal and will revisit it at the next Town Board meeting on June 13.

Melissa Alber-Chase: Ms. Alber-Chase commented that upon her review of the Steering Committees lengthy document, there appeared to be no clarifications for parameters pertaining to underground well drilling. Her concern is that due to the nature of the horizontal drilling, the potential is very real for nearby homeowner's wells and wetlands to be significantly impacted. In addition, she had not seen any notations within the recommendations addressing any potential health risks to the residents. Finally, she expressed that ill will has been a sentiment for some within our community as her concerns have gone unheard and have been alienated from the process. Despite her initial optimism, Ms. Alber-Chase said that being invited to meetings but not able to speak contributed to the lack of cooperation. She would like to see a fresh page on the topic with all parties putting their energies and resources together. Taking advantage of the knowledge of those that care so deeply for the greater goal of the community would be something she had hoped could be achieved.

Lee Gratwick: Ms. Gratwick also expressed that because of the decisions made by the Steering Committee and the Town Board she too feels like she has not been heard.

Supervisor Deming said that taking into accounts the opinions of the community as a whole while trying to protect it and accommodating potential drilling has not been an easy task. He would like to see a compromise where there are benefits for

all. His hopes were that we could come up with a solution that would protect our community and the agricultural industry the best way possible. Going forward, the Supervisor assured the group that input from the Steering Committee and the community will be welcomed.

Grayce McLaughlin: Ms. McLaughlin commented that she felt the Board did a flip on their stance regarding hydrofracking and she was also concerned with what others had voiced earlier about health issues, noise and the lack of information forthcoming. Also addressed were the Zoning regulations that pertained to the project not far from her home. Ms. McLaughlin remarked that she has little faith with the Zoning here in our Town.

Henry Fuller: Respectfully disagreed with Attorney Campbell's earlier remarks. Mr. Fuller felt as though the Steering Committee was extremely careful when choosing the wording and definitions pertaining to the road use. In addition, Mr. Fuller reminded all that a farmer must lease their property in order for the process to even start.

Melissa Alber-Chase: Ms. Alber-Chase asked if it was appropriate for people to submit questions as the process is ongoing. She was pleased to learn that they would be accepted and reviewed. Also, she posed the question as to whether or not zoning applies to underground properties given the nature of horizontal drilling and the potential to impact underground neighboring areas.

Councilmember Parnell added that the Board/Town wanted bigger setbacks but we had to follow DEC requirements. Board as a whole would have liked to have seen greater setbacks.

Mr. Campbell closed with remarks that the Steering committee did a great job despite the vast amounts of material pertaining to the subject matter. All agreed that it is a hard job to protect the community and will continue with follow up work sessions such as the one this evening for additional information and updates.

Supervisor Deming made a motion to adjourn
RESOLUTION offered by Mrs. Parnell and seconded by Mr. Rose to adjourn the Town Board Work Session. Voted on and approved Yes-5, No-0

The Work Session closed at 9:05 pm.

Respectfully submitted,

Patricia A. Barefoot
Dep. Town Clerk

