

Work Session  
September 3, 2013  
7:00 p.m.

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

Absent: None

Others: Town Attorney, James Campbell and Patricia Gardner

Supervisor Deming opened the work session at 7:03 p.m. and asked the Board if all members had the opportunity to review Mr. Campbell's comments. All Board members replied they had.

Supervisor Deming and Attorney Campbell stated the work session was to review any possible suggestions and/or changes to the original document on hydrofracking. Mr. Deming commented much of the document is set, but additional wording still needs to be clarified some. Mr. Campbell agreed he too had concerns on wording and wanted to address any potential controversial language. Attorney Campbell stated the most important aspect is that the Board has to identify where they stand on hydraulic fracturing. The Steering Committee's purpose was to create a document for recommendation to the Town Board with the understanding the Board has the ultimate approval. The Town Board must believe in what has been created and potentially adopted. Mr. Campbell stated in the Steering Committee's minutes they indicated that "this committee accepted the path to allow fracking". It is the responsibility of the Town Board to establish policy on what is to be permitted within the Town, the Steering Committee does not have the authority or jurisdiction to make such decisions. Councilwoman Parnell stated, as a member of the Steering Committee, the decisions made were based upon the division of this community and felt their action was in the middle. Mr. Campbell reported the Board needs to take a position vocally on where they stand. Mr. Deming replied he believes they have done that already. Mr. Campbell commented the intent of the document might be to let the industry into the Town of York, but some may take exception to any regulatory wording in place. There will be major impacts if wording is too restrictive. Supervisor Deming and Councilwoman Parnell expressed much of the pertinent information is already in our zoning.

Mr. Campbell discussed the importance of the Principal Aquifer Overlay (PAO) District. Due to the fact large portions of the Town are not a part of the municipal water district, they rely completely on a well. The intent of the Overlay is to preserve the quantity and quality of the existing groundwater resource within the aquifer areas. Mr. Campbell stated the regulations can contain as much as you want, but suggested to be mindful not to single out a particular industry, otherwise it could compromise the rest of the document. Councilman Deuel suggested using the word "zoning" instead of regulations. Mr. Deuel also addressed Attorney Campbell's comments pertaining to responsibility for Special

Use Permits. Currently in our zoning the Planning Board has the responsibility to approve such permits, but if the Board wants to reverse that procedure fine, but we need to be consistent in our zoning. Mr. Campbell stated going forward with any and all planning applications you must be consistent, whichever Board is designated. Mr. Deuel questioned under Road Use and Repair, Section 3.3(c), is the “Town of York designee”, our Highway Superintendent? Mr. Deuel stated if Mr. Worden is unavailable, we should have a second in command on file. Mr. Campbell replied the Highway Superintendent is the best choice, but if not available we should document a chain of command to follow (1<sup>st</sup>: Highway Superintendent, 2<sup>nd</sup>: Deputy Highway Superintendent and 3<sup>rd</sup>: Chair of Public Works). Mr. Campbell stressed the need to define all wording, especially for future applications, the more detail oriented we are the more helpful it is to the applicants.

Under Appendix D (Draft Zoning Amendments/Revisions), Mr. Campbell suggested changing Section 201 the term “Leaseholder” to “Natural Gas or Oil Leaseholder” for more clarification.

Section 518 (Outdoor Lighting Regulations) The Board and Mr. Campbell discussed such wording and agreed to refer to what is currently in our zoning regulations. Councilman Deuel stated if the applicant cannot abide by what we have existing on the books, the application should not go forward. Supervisor Deming added with the existing requirements in the zoning, it will be easier to defend if it has already been adopted and in place. Mr. Campbell asked did the Board wish to eliminate this section or refer this portion to the existing code. The Board agreed to REMOVE Section 518 (Outdoor Lighting Regulations).

Section 618 (Natural Gas and Petroleum Extraction and Production) B(3). Natural Gas and Petroleum Extraction and Production facilities shall not be the primary use of land. Mr. Campbell stated with this wording, how will the applicant demonstrate that it is not the primary use of land, it is unclear. Is this intended to mean Section 618 only applies to Natural Gas and Petroleum Extraction and Production Facilities are an accessory use of the property or cannot be used unless it is the primary use of the land. Mr. Campbell added when speaking about use, we are not talking about volume of the land. Councilman Deuel stated perhaps we look at this section by acreage. Mr. Deuel commented any lease signed now, he hopes the owner knows what they are signing, previously the older leases did not make any determination where well pads were to be placed. Supervisor Deming asked, if someone has already signed a lease in anticipation of this document’s approval, can we defend it? Mr. Campbell replied it is hard to say in this matter, he would have to review the specific wording to determine and even then gets very complicated. Mr. Campbell suggested placing a minimum acreage size (5 acres) or removal of this Section (B) (3) all together, due to the fact it can be arbitrary and capricious.

Mr. Deuel asked in Section 618 (A) “Intent” to add, after shall be met for the construction and operation of Natural Gas...and under (B) (1) “Applicability” the first sentence change “these regulations” to “this document”. The Board agreed. Attorney Campbell reported in Section 618 (D) (2), it states “No zoning permit or other approval shall be required for Natural and Petroleum wells that exist prior to the effective date of this Zoning Code amendment”, and asked the Board

shouldn't they be required? Councilman Deuel stated if a well exists now, as a vertical well, they should not be required to obtain a zoning permit for routine maintenance, as long as they are not re-drilling it. Supervisor Deming agreed they should be able to continue maintenance of their existing well, but can't expand on it. Mr. Deuel added if they have to construct a well pad, it would require a permit. Section 618 (D) (3), Attorney Campbell states placing any restriction for the transfer and/or sale of a facility or permit will be seen as regulatory and pre-empted by the Environmental Conservation Law. Section 618 (D) (4), Councilman Deuel suggested this portion be deleted. Mr. Deuel stated after reading Section 618 E (f), (i), (ii), (v) he feels our present zoning is quite good, and the State allows a distance of 500 feet when in close proximity to private wells. Supervisor Deming expressed his opinion to increase the distance footage, stating 500 feet is not enough. The Board discussed and agreed to increase the footage to 2,000 feet. Under Section 618 F Standards (4) "The applicant shall coordinate all (remove and) land clearing activities associated with Natural Gas and Petroleum Extraction and Production Facilities". F (6) Natural Gas and Petroleum Extraction and Production Activities that take place within 2,000 feet (remove 500 feet) of inhabited dwellings or agricultural buildings shall not occur during the hours of 7 p.m. to 7 a.m. Monday through Saturday and shall not occur on Sunday. Section F Standards (#7) Facilities shall provide adequate off-street parking for all employees, including any subcontractors, so that no vehicles are parked or standing on any public roadways. Parking facilities shall be designed and constructed in accordance with Section 519, with the exception of 519.F(2) ( Board REMOVED: parking shall be located within the well pad site). Section 618 E Permit Applications for Natural Gas and Petroleum Drilling Facilities: 1.(L) Public Response Plan. The Board discussed the option of re-writing this section by including a fine or removing the portion itself. The Board agreed to remove Section 618 E. (1)L. Section G. Required Setbacks. (a-d) Change the footage from 500 feet to 2,000 feet. Also adding: (e) 2,000 feet from any well or water supply servicing a residence and (f) 2,000 feet from any habitable dwelling. The Board agreed by adding (e) (f), we will remove Section F. Standards (#6).

Attorney Campbell addressed Section 618 (H) Noise and Setback Easements. Mr. Campbell stated he didn't care for this portion, as he feels it deviates from our current zoning. The Board agreed and suggested #1 and 2 be removed and wording to refer back to current zoning. The Board also discussed Section 1001 (Penalties for offenses). Currently the document reads: penalty amount to not more than \$2,000.00. The Board increased the fee from \$2,000.00 to \$20,000 per offense.

Under Section 410.Principal Aquifer Overlay (PAO), the Board and Attorney Campbell discussed adding in (A) Purpose, in the sixth sentence, "This will be accomplished by identifying industrial uses (removing: certain uses) that could be potentially damaging to ground water quality, and by establishing minimum documentation and submittal requirements to protect groundwater quality and quantity". (C) Applicability, Keeping the first sentence, but REMOVAL of entire second sentence, "where the Overlay boundary is in dispute, the landowner shall

consult a professional geologist, hydrologist or other professional to determine more accurately the boundary of the Principal Aquifer Overlay”.

Mrs. Gardner addressed the fact that the Board has yet to acknowledge receipt of the Steering Committee’s Final Conclusions and Recommendations. Supervisor Deming stated he believed at the May 9<sup>th</sup> regular meeting, where the official presentation was made, that was sufficient, but commented he will gladly make such resolution.

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates stating that the York Steering Committee delivered and presented to the Town Board their Final Conclusions and Recommendations on Thursday, May 9<sup>th</sup>, 2013. Voted on and approved, Yes-5, No-0.

OTHER:

(1) Art Bernecker:

Supervisor Deming informed the Board that resident Arthur Bernecker spoke with Clerk Harris today about a request for water to his vacant land parcels on Dow Road. Mr. Bernecker stated he recently received an offer on one of the five lots he owns near Route 36, (lot 7R-5). Mr. Bernecker asked if the Town would allow him permission to have a contractor (at his cost) install roughly 687 feet of piping to service the lots. He commented he had hoped to install piping all the way down Dow Road, including the middle section, (305.26 feet) owned by Richie Brock, but he expressed his decision not to participate.

The Board briefly discussed Mr. Bernecker’s request for a waterline and stated due to the fact that a partial (dead end) line is already in off of Retsof Road, they do not believe the Livingston County Health Department will allow a second dead end line to be installed, and will encourage him to put the additional 300 feet in if he wants municipal water. Supervisor Deming stated he will contact the Health Department for verification and discuss it further as well with Highway Superintendent, Mr. Worden and Water Operator, Mr. McCracken.

ADJOURNMENT

RESOLUTION offered by Mrs. Parnell and seconded by Mr. Gates to adjourn the Work Session at 9:00 p.m. Voted on and approved, Yes-5, No-0.

Respectfully Submitted,

Christine M. Harris, Clerk

