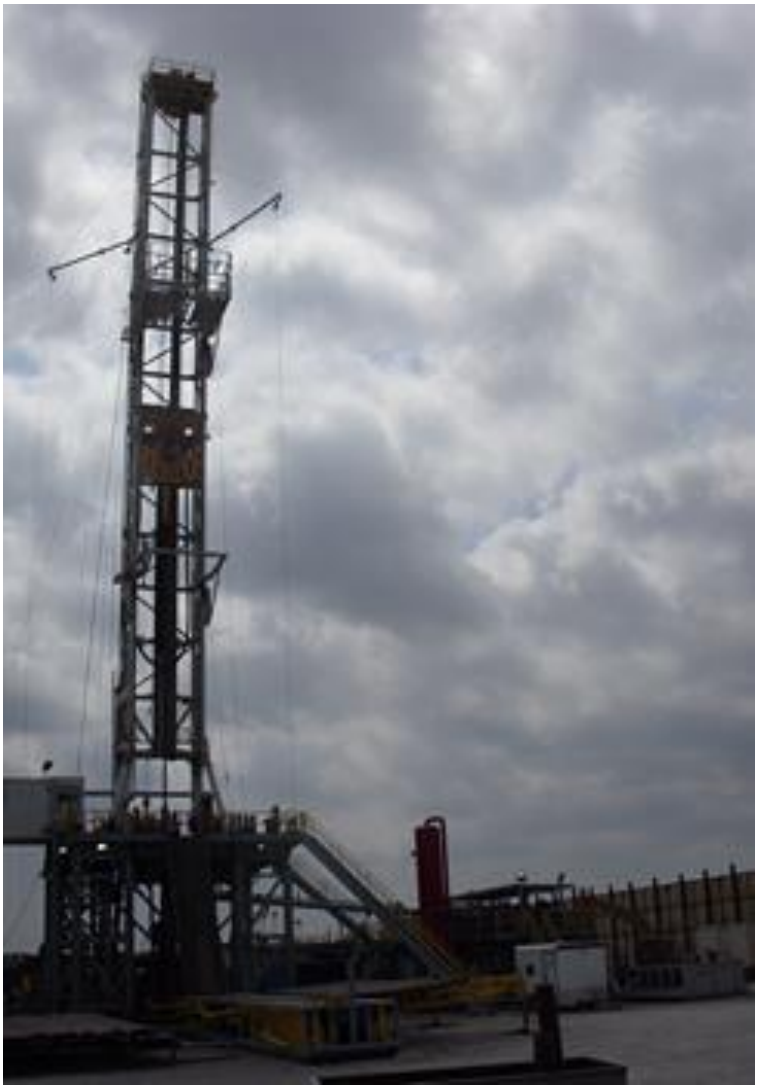
DRILLING DOWN:

Local Fracking Decisions Highlight Failures in New York's Municipal Ethics Laws



New York Public Interest Research Group

December 2014

Acknowledgements

Drill Down was researched and written by Russ Haven and Cathleen Breen of the New York Public Interest Research Group Fund (NYPIRG). NYPIRG's Blair Horner made indispensible contributions to the production of the report, including helping with its organization, editing and formatting.

The authors thank Rose Barone, Amanda Carpenter, Diana Fryda, Aileen Sheil, Joseph Stelling, and Rebecca Weber of NYPIRG for their significant contributions.

NYPIRG gratefully acknowledges the assistance of Mark Davies, Executive Director of the New York City Conflicts of Interest Board and chair of the Government Ethics and Professional Responsibility Committee of the New York State Bar Association's Municipal Law Section, who reviewed and provided feedback on draft sections of this report pertaining to municipal ethics law.

Thanks to Robert Freeman, Executive Director of the New York State Committee on Open Government, for pointing out COOG resources and his patient discussions of issues related to transparency and the state's Open Meetings Law and Freedom of Information Law.

We also thank Environmental Policy Consultant Katherine Nadeau for reviewing a draft of the report and offering thoughtful suggestions and comments.

NYPIRG is grateful to *Environment & Energy Publishing* (www.eenews.net/) for permission to use the photo image on the cover of this report.

Thanks also to the many town clerks who diligently responded to our requests for public records.

NYPIRG is a nonpartisan, not-for-profit organization whose mission is to affect policy reforms while training New Yorkers to be citizen advocates. NYPIRG's full-time staff works with New York State residents, produces studies on a wide array of topics, coordinates state campaigns, engages in public education efforts and advocates on behalf of the public.

© 2014, NYPIRG

You can download the report by going to the NYPIRG website:

www.nypirg.org

DRILLING DOWN:
EXECUTIVE SUMMARY

Local governments in New York have been thrust into the crosshairs of the fracking debate. While it is unclear how the fracking issue will unfold in New York, the governor indicated that local support or opposition could be a key factor if the state were to move forward with fracking in some fashion. In combination with the recent Court of Appeals decision, local governments are being put squarely at the center of decisions on one of the most high profile and controversial issues in recent memory. Indeed, municipal officials appear to be increasingly called upon to play a crucial role in how state policy plays out at the local level: fracking; casino siting; wind energy development; and very possibly the future of retail energy distribution.

To inform the public about how local government functions in addressing controversial issues, and to arm local government officials and community members with information about what the law requires and what best practices look like in this area, NYPIRG reviewed municipal decisions and actions related to fracking. The main goal of this review was to evaluate the effectiveness of what state and local law requires with respect to municipal government transparency, public participation and ethical conduct by local officials. Based upon this work we make recommendations for ways to boost accountability in these areas. In this way, state policymakers, local governments and community residents can work to improve transparency, accountability and integrity of local decision making on issues affecting public health, the environment and the myriad other policy decisions that are decided at the community level.

SUMMARY OF FINDINGS

Finding: New York State's ethics laws fail to ensure that local governmental decisions are free from conflicts of interest. The laws fail to effectively address potential conflicts of interest posed by the relationships between public officials and private entities; penalties typically are anemic; there is no single training, guidance or oversight agency; and enforcement is virtually non-existent.

Finding: New York State's lobbying law contains a gaping secrecy loophole. The loophole exempts reporting on efforts to lobby local officials in cities, towns, villages and other municipalities with fewer than 50,000 residents, effectively allowing the spending by business interests and advocacy groups to influence local governments to fly completely under the radar.

Finding: New York State's Open Meetings Law contains gaps that can be used to deprive the public of timely notice of local government meeting agenda items and access to pertinent documents. This undermines the important transparency goals of the state's open government law and subverts democracy in communities across the state.

Finding: Some small local governments lack the financial resources, infrastructure, expertise and personnel to substantially comply with the state's open government laws. Local governments strain to receive and respond to records requests under the Freedom of Information Law and post information to fulfill the promise of the Open Meetings Law, thereby reducing local government transparency, making compliance with the law unduly challenging and creating a risk the public will be deprived of participation opportunities and information about how local government conducts its affairs.

> "With all the obvious potential for conflicts of interest and significant sums of taxpayer money at stake, the current laws regarding municipal ethics are both weak and frequently unenforceable."
>
> *Andrew Cuomo, "Clean Up Albany" report, 2010*

RECOMMENDATIONS

Then candidate-for-Governor Andrew Cuomo's 2010 campaign policy book offered both the correct diagnosis and the correct prescription for the problems that beset the state's local government ethics laws: calling for a stronger code of ethics; eliminating conflicts of interest; expanding the use of disclosure and recusal to address conflicts; better use of financial disclosure requirements; closing gift loopholes; creating local boards of ethics to boost compliance; and the creation of strong enforcement mechanisms.

There is little dispute that the state's local government ethics laws are in need of a complete overhaul. NYPIRG recommends that reforms include at least the following:

Recommendation: The state ethics law applicable to municipalities needs to be overhauled. The law must be revised to include strong conflicts of interest provisions, including mandatory transactional disclosures as the rule and full recusal when appropriate; an independent training, guidance and enforcement agency; requiring business interests to disclose in a central location the details of land-development agreements; and allowing citizens to have standing to enforce ethics violations and access to reasonable attorneys' fees if they prevail.

Recommendation: The local government lobbying secrecy loophole must be closed. This can be accomplished by simply removing the state law provision that relieves lobby clients and lobbyists from the obligation of reporting on their spending and activities targeted at local governments with fewer than 50,000 residents, thereby requiring that all local lobbying to be reported.

Recommendation: Strengthen the Open Meetings Law to improve public participation and confidence in local government decisions. The law must prevent local governments from "gaming the system" through the

introduction of unannounced resolutions and requiring that last-minute actions be justified by presentation of the facts necessitating immediate action and the reasons why delay to accommodate public notice and review is not practicable in the matter being advanced without notice.

Recommendation: Bring local government transparency into the 21st Century. New York should require videotaping and archiving of unedited public meetings with an eye towards webcasting meetings, as is currently done for state agencies.

DRILLING DOWN:
THE LOCAL POLICYMAKING LANDSCAPE

Local governments in New York have been thrust into the crosshairs of the fracking debate. While the future of fracking in the state will turn on the decision by the governor and the New York State Department of Environmental Conservation ("DEC"), fed in part by the June 13, 2012 *New York Times* report that the governor planned to approve fracking in communities that demonstrated support[1] and the Court of Appeals' decision affirming that local governments can ban fracking through their land use powers,[2] municipalities are assuming a critical role in how the fracking issue plays out in New York.

Since the oil and gas industry identified New York regions as potentially lucrative fracking locations, industry interests have worked to sign property owners to drilling leases and enlist support from local governments. These efforts intensified when the Joint Landowners Coalition of New York ("JLCNY") and Clean Growth Now ("CGN") launched efforts to preempt local ban initiatives; respond to the governor's and the DEC Commissioner's statements about potentially authorizing fracking in supportive communities; and ensure that fracking options remain open in the Southern Tier area, which industry considers to have the greatest potential for gas development.

NYPIRG undertook a review of the circumstances surrounding proposals to oppose fracking bans and/or support the DEC review process in 59 towns and villages in the Marcellus Shale Drilling Region.[3] The review of the various fracking proposals also provided an opportunity to see how well New York's transparency and municipal ethics laws served the public's interest in ensuring the integrity of local decision making.

Research for this report entailed making records requests under the state Freedom of Information Law to scores of municipalities, as well as the Office of the Attorney General of New York State; extensive online searches; and conducting site visits to seven town clerks' offices. NYPIRG researchers reviewed thousands of pages of local government documents, public records, news reports and other information sources.[4]

---

[1] *Cuomo Proposal Would Restrict Gas Drilling to a Struggling Area*, Danny Hakim, *The New York Times*, June 13, 2012. Accessed at www.nytimes.com/2012/06/14/nyregion/hydrofracking-under-cuomo-plan-would-be-restricted-to-a-few-counties.html.

[2] *In the Matter of Wallach as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden and Cooperstown Hostein Corporation v. Town of Middlefield*, 2014 NY Slip Op 04875, consolidated appeals Nos. 130 and 131 decided June 30, 2014, Graffeo, J,. This decision can be accessed at: www.nycourts.gov/ctapps/Decisions/2014/Jun14/130-131opn14-Decision.pdf.

[3] A complete listing of the localities surveyed is contained in Appendix B.

[4] A description of the methodology is contained in Appendix A.

This research shows that many local governments in the Marcellus Shale Drilling Region would face tremendous pressure from those on all sides of the fracking debate: businesses and individuals with financial interests in advancing fracking, as well as residents either opposed to fracking or deeply skeptical that the purported benefits of fracking will outweigh the public health, environmental and community character consequences.

A clear finding of our review is that the state's transparency and municipal ethics laws are woefully inadequate. These laws fail to ensure that the public has timely information about local governments' consideration of controversial issues and access to relevant information and documents about the subjects considered by local government. The problems are compounded by laws that fail to require disclosure of information about who is attempting to influence many local governments and laws that fail to stringently regulate conflicts of interest that arise at the municipal level. Moreover, there is no single oversight agency charged with providing guidance on or enforcement of the local ethics laws, resulting in a "Wild West" environment for local decision making.

DRILLING DOWN:
GOVERNMENT CLOSEST TO THE PEOPLE

New York is home to 62 counties, 932 towns, 62 cities and more than 500 villages.[5] For the vast majority of New Yorkers, the most important public policy decisions are not made in Washington or Albany, but rather at the local level. Critical decisions historically made at the municipal level include school budgets, property taxes, municipal services and land-use decisions.

At the community level, perhaps nothing is more important—and often is more controversial—than decisions about what types of development and kinds of activities to allow or restrict within the local jurisdiction. This goes to the heart of local "home rule" and community character, which for many defines life in New York's cities, towns and villages. Fracking and casino siting are two issues that recently have placed local governments in the hot seat.

While New York's local governments offer the virtues of citizen policymakers selflessly providing public service to their communities, the reality is often more complicated than this Norman Rockwell portrait would suggest.

Many local governments struggle with limited resources, including insufficient numbers of and/or outdated computers, spotty Internet access, inadequate or nonexistent website development, and insufficient staffing. Local governments also can be more insular, with infrequent personnel turnover, tied to their historic ways of running things and dependent on a small circle of outside advisors. Moreover, local governments likely get less scrutiny from local reporters in an era of newspaper downsizing.

These factors place local governments and residents at a severe disadvantage when well-resourced interests, such as cable television providers, casino operators, wind energy companies and oil and gas industry representatives, want something from local government.

In addition to resource disparities, when big corporations look to do business in small communities, they not only bring in experienced lawyers, economists and engineers, but they can seek to influence local decision makers by doing private business with them, their families and friends or otherwise acting in ways that personally benefit those officials or their families, employers, or businesses.

---

[5] *21st Century Local Government*, New York State Commission on Local Government Efficiency & Competitiveness, April 2008. Accessed at www.nyslocalgov.org/pdf/LGEC_Final_Report.pdf?pagemode=bookmarks=pagemode=bookmars.

Thus, local democracy faces the twin threats of a lack of resources to analyze and, when appropriate, counter the arguments advanced by well resourced business interests, and the risk that local officials will be influenced by the prospects of financial gain for themselves and/or their families.

In the past few years, the issue of local governments' role in the fracking debate has played out in communities throughout the state, both inside and outside the Marcellus Shale Drilling Region. Many localities have considered the fracking issue, with resolutions of support and opposition adopted, including bans through use of the municipal zoning powers.

Part of the legal landscape was clarified on June 30, 2014, when the New York State Court of Appeals, the state's top court, affirmed the use of home rule zoning powers by local governments in New York to adopt ordinances that ban the use of land within municipal borders for fracking.[6]

While it is unclear how the fracking issue will unfold in New York, the governor indicated that local support or opposition could be a key factor if the state were to go forward with fracking in some fashion.[7] Combined with the Court of Appeals decision, this puts local governments squarely at the center of the debate on one of the most high profile local issues in recent memory. It is clear that oil and gas industry interests and their local allies have viewed municipal governments as strategically crucial to their efforts to have fracking approved in New York.

This report aims to inform the public about how municipal government functions in addressing controversial issues. In order to arm local government officials and community members with information about what the law requires and what best practices look like in this area, NYPIRG reviewed municipal activity on fracking. The main goals of this review were to evaluate the effectiveness of what state and local law requires with respect to transparency, public participation and ethical conduct by local officials. Recommendations for ways to boost accountability in these areas are offered as a path forward. In this way, state policymakers, local governments and community residents can work to improve transparency, accountability and integrity of local decision making on issues affecting public health, the environment and the myriad other issues that are decided at the community level.

---

[6] *In the Matter of Wallach as Chapter 7 Trustee for Norse Energy Corp. USA v. Town of Dryden and Cooperstown Hostein Corporation v. Town of Middlefield*, 2014 NY Slip Op 04875, consolidated appeals Nos. 130 and 131 decided June 30, 2014, Graffeo, J,. This decision can be accessed at: www.nycourts.gov/ctapps/Decisions/2014/Jun14/130-131opn14-Decision.pdf.

[7] *Cuomo Proposal Would Restrict Gas Drilling to a Struggling Area*, Danny Hakim, *The New York Times*, June 13, 2012. Accessed at www.nytimes.com/2012/06/14/nyregion/hydrofracking-under-cuomo-plan-would-be-restricted-to-a-few-counties.html.

DRILLING DOWN:
LOCAL ETHICS –
THE CHASM BETWEEN PRINCIPLES & PRACTICES

New York's ethics laws that apply to local government are intended to prevent the appearance and reality of unethical conduct and address situations where conflicts of interests may arise. Public officials at every level of government owe a fiduciary duty to the public they serve, meaning they are to act in the public's best interests, without divided loyalty or self interest. They are also obliged to take reasonable care in the execution of their responsibilities. These are bedrock principles of democracy.

James Madison advanced an early articulation of the high standards of ethical conduct for public servants and the stringent safeguards that would be essential to the nation's success under a new constitution:

> "The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess wisdom to discern, and most virtue to pursue, the common good of society; and in the next place, to take the most effectual precautions for keeping them virtuous whilst they continue to hold their public trust." [8]

The U.S. Supreme Court and federal courts have recognized the high standards to which government officials must be held. Summarizing the well-settled case law in this area, Supreme Court Justice Byron White wrote:

> ". . . a public official owes a fiduciary duty to the public, and misuse of his office for private gain is a fraud."[9]

In New York, the standards for ethical conduct also flow from the state Constitution, which requires each state and local government public official to be sworn into office and vow as follows:

> "I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties [of my office] according to the best of my ability[.]"[10]

---

[8] James Madison, *The Federalist*, #57. Accessed at: http://avalon.law.yale.edu/18th_century/fed57.asp.
[9] *McNally v. United States*, 483 U.S. 350 (1987).
[10] Article XIII, section 1, "Oath of Office," Constitution of the State of New York. *Also see* Public Officers Law section 10.

The Courts of New York through the Common Law similarly have articulated a high standard of ethical conduct required for public officials:

> "A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio[11] of honor the most sensitive, is then the standard of behavior."[12]

Both the state Office of the Attorney General and the Office of State Comptroller have recognized the high level of ethical conduct expected and required of public officials in New York:

> "We have emphasized that public officials should avoid circumstances that compromise their ability to make impartial judgments solely in the public interest."[13]

> "Municipal officers and employees need to be above reproach in putting the interests of their constituents above their own. Citizens depend on officials to act in the public good and to be honest and efficient in their handling of public resources."[14]

New York's Porous Local Ethics Laws

Unfortunately, the laws on the books applicable to local government ethics and conflicts of interest do not match the articulation of or expectation for high standards of conduct by public officials.

While local governments are subject to a patchwork of state and local laws applicable to ethical standards and conflicts of interest, General Municipal Law ("GML") Article 18, "Conflicts of Interest of Municipal Officers and Employees," is the primary statutory authority for establishing the guidelines for local officials.[15] The law's core provisions date to 1964 and have seen only modest

---

[11] *Punctilio*, a fine detail in observance of a code, from the Italian *puntiglio*, point of honor or scruple. *See* www.merriam-webster.com/dictionary/punctilio.

[12] New York State Court of Appeals Judge Benjamin Cardozo, quoted in support of applying the highest fiduciary standards to public officials in *Tuxedo Conservation and Taxpayers Association v. Town Board of the Town of Tuxedo*, 69 A.D.2d 322 (Second Dep't 1979) [quoting *Meinhard v. Salmon*, 249 NY 458 (1928)].

[13] Attorney General Opn. No. 97-5. Accessed at www.ag.ny.gov/sites/default/files/opinion/I%2097-5%20pw.pdf.

[14] *Protecting the Public's Interest: A Tutorial on Local Government Ethics and Transparency in New York State*, Office of State Comptroller. Accessed at www.osc.state.ny.us/localgov/training/modules/protecting/.

[15] For a discussion of the various other state provisions that apply to municipal officials, *see Ethics Laws for Municipal Officials Outside New York City*, Mark Davies, New York State Bar Association, "Government, Law and Policy Journal," Fall 1999, Vol. 1, No. 1.

revisions since that time.[16] Among the law's many deficiencies is that it does not contain a general prohibition on the use of public office for private gain. It also omits post-employment—known as "revolving-door"—provisions.

GML Article 18 focuses primarily on conflicts of interest arising from local government contracts. In particular, subject to a confusing set of exceptions, the law bars local government officials from having an "interest" in a municipal "contract"—broadly defined—in which the officer or employee can exercise some level of direct or indirect control.[17] Article 18 also requires local governments to enact local ethics codes, which may be more restrictive, but no less rigorous than the coverage under state law.[18]

State law indirectly regulates conflicts of interest arising in relation to local legislative acts by directing that municipalities at a minimum require disclosure of such conflicts as part of the local ethics codes they are required to adopt.[19] GML section 806 provides in relevant part:

> 1.(a) The governing body of each county, city, town, village, school district and fire district shall . . . by local law, ordinance or resolution adopt a code of ethics setting forth the guidance of its officers and employees the standards of conduct reasonably expected of them. * * * Codes of ethics shall provide standards for officers and employees with respect to disclosure of interest in legislation before the local governing body, holding of investments in conflict with official duties, private employment in conflict with official duties, future employment and such other standards relating to the conduct of officers and employees as may be deemed advisable.

As a check on self-dealing and to facilitate identifying conflicts, state law requires local public officials to file an annual financial disclosure statement.[20] However, the state GML Article 18 created a huge loophole, making this provision applicable only to "political subdivision[s]," *i.e.*, only counties, cities,

---

[16] *See Article 18 of New York's General Municipal Law: The State Conflicts of Interest Law for Municipal Officials*, Mark Davies, *Albany Law Review*, 1996, Vol. 59, No. 4, p. 1321.

[17] "Contracts" are defined to include written or oral agreements, but also includes lawsuits and other demands. An "interest" may be a direct or indirect pecuniary interest, without the official being a party to the agreement; but the public official must have some powers or duties with respect to approving or overseeing the contract for the prohibition to apply. The prohibition applies to the official, spouse, minor children and dependents and to the official's business firm, partnership or association. A shareholder stake may qualify as an "interest."

[18] GML section 806(1). Municipalities have adopted local ethics codes that mimic the largely ineffective state law. A 2010 audit of local government compliance with GML Article 18 and administration of local ethics laws conducted by the Office of the State Comptroller found substantial problems. *See* discussion *infra*.

[19] GML section 806(1)(a).

[20] GML section 811.

towns, and villages, with a population of 50,000 or more.[21] This exception effectively carves out the majority of local governments in upstate New York.

All local government officials and employees must disclose their interests in proposed or actual municipal contracts, with several exceptions.[22] Importantly, GML Article 18 also requires disclosure of a public official's interest in land use matters, including zoning, variances, licenses and permits. The law places the burden of disclosure of a public official's conflict upon the applicant in a land-use action or determination.[23]

Municipal officials are prohibited under GML Article 18 from disclosing confidential information they obtain in furtherance of their official duties or using that information for personal gain.[24] Municipal officials are also prohibited from accepting certain gifts,[25] although that prohibition has been criticized as being so vague as to provide little guidance at all.[26]

GML Article 18 provides only for limited penalties, namely, disciplinary sanctions, criminal penalties, voiding of a contract, and, in the case of financial disclosure only, civil fines.[27] For example, a violation for taking action on a "contract" that an official has an "interest" in carries a potential misdemeanor criminal penalty if done "willfully and knowingly."[28] Also, a contract entered into in violation of Article 18 is null, void and wholly unenforceable.[29] A failure to report a public official's interest in a land-use matter is subject to misdemeanor

---

[21] GML section 810(1).

[22] GML section 803. Under GML Article 18, municipal officials and employees are barred from having an interest in contracts that they approve or over which they exercise some level of control. However, with limited exceptions, namely those set forth in GML section 802(2), contracts that do not meet the prohibition requirements are still subject to the official's mandatory disclosure in writing of the nature and extent of the interest. *See Conflicts of Interest: Municipal Officers and Employees, The Fundamentals of Article 18 of the General Municipal Law*, Office of the State Comptroller, Division of Legal Services. Accessed at: www.osc.state.ny.us/localgov/legaltopics/pdf/Article18GeneralMunicipalLaw.pdf.

[23] GML section 809(1).

[24] GML section 805-a(1)(b).

[25] GML section 805-a(1)(a).

[26] *See* Mark Davies, *Ethics Laws for Municipal Officials Outside New York City*, New York State Bar Association, "Government, Law and Policy Journal," vol. 1, no. 1, at 44, 45 (Fall 1999). Accessed 'at www.nyc.gov/html/conflicts/downloads/pdf2/municipal_ethics_laws_ny_state/ethics_laws_mun_officials_outside_NYC.pdf. *Also see* Mark Davies, *How Not to Draft an Ethics Law*, New York State Bar Association, "Municipal Lawyer," vol. 24, no. 4, at 13, 14 (Fall 2010). Accessed at http://www.nyc.gov/html/conflicts/downloads/pdf2/municipal_ethics_laws_ny_state/how_not_to_draft_an_ethics_law.pdf.

[27] *See* GML sections 804, 805, 805-a(2), 811(1)(c), and 812(6).

[28] GML section 805.

[29] GML section 804.

punishment.[30] A violation of the conflicts of interest provisions in GML section 805-a (acceptance of certain gifts, disclosure or use of confidential information, and private representation on certain matters before a municipality) carry no penalty except disciplinary action.[31]

Like many ethics laws, however, enforcement of the state and local ethics code is largely dependent on honest self-reporting by public officials and watchdogging by local residents. Local residents and businesses may file complaints with local district attorneys or in certain instances bring taxpayer actions to prevent improper activity by a municipal official.[32] The offices of the Attorney General and the State Comptroller also play an oversight and enforcement role and issue advisory opinions.

In its 1993 final report, the State of New York Temporary State Commission on Local Government Ethics, established by Governor Mario Cuomo to look at the condition of the state's municipal ethics laws, came to a troubling conclusion:

> "That municipal officials in New York State are deprived of the guidance offered by an understandable and comprehensive statewide code of ethics is a disgrace."[33]

Twenty years later, little has changed: New Yorkers still are ill-served by a patchwork of porous laws.[34] Included among the glaring problems is that there is no general prohibition on acting for personal benefit and no revolving door prohibitions; disclosure requirements are non-existent or weak and poorly enforced; and the administration, guidance and enforcement components lack consistency and rigor, when they exist at all. These problems undermine public confidence in local decisions.

---

[30] GML section 809.

[31] GML section 805-a(2).

[32] N.Y. Const. art. VIII, section 1; GML section 51.

[33] *State of New York Temporary State Commission on Local Government Ethics Final Report*, *Fordham Urban Law Journal*, Volume 21, Issue 1, Article 1 (1993). Accessed at http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1385&context=ulj. With the assistance of the three major municipal association, the Commission drafted a comprehensive new Article 18 but was unable to secure its enactment.

[34] In the past two decades there have been some modest steps forward. For example, there is better access to local campaign finance reports; and lobbyists and their clients must report on efforts to influence larger municipalities. *See* discussion, *infra*.

DRILLING DOWN:
EVIDENCE OF POSSIBLE CONFLICTS

NYPIRG's review of the adoption of local resolutions related to fracking reveals the huge loopholes in the state's ethics laws, loopholes that appear to have allowed public officials with interests in gas development to vote on or otherwise take actions that are related to fracking.[35] Moreover, for the most part, the public officials did not proactively disclose their potential conflicts of interest. Indeed, when pressed on possible conflicts of interest, public officials defended their actions in a number of ways, including saying that the resolutions were neutral or that the resolutions had no force or effect.[36],[37]

The following local government officials had an interest in gas development leases at the time of casting their votes in favor of pro-drilling resolutions:

Town of Colesville:

- Councilmember Stephen Flagg had an interest in a gas lease in conjunction with others with the last name Flagg for two properties totaling around 49 acres in the Town of Colesville at the time of the May 3, 2012 vote, according to Broome County property records.[38]

---

[35] The fact that public officials appear to have had an interest in gas development at the time of their vote presents a *possible* conflict of interest. NYPIRG is *not* asserting that a conflict of interest existed in these instances, but rather that these examples suggest the *possibility of a conflict*, thereby highlighting the problems with existing law.

[36] According to the official town meeting minutes, the Town of Colesville Town Attorney Alan Pope told a resident that there was no conflict of interest posed by Councilmember Glenn Winsor's leadership in the local pro-drilling Windsor/Colesville Gas Coalition. The minutes report that "Pope said that he does not see that any of the Board Members show a conflict of interest because the resolution does not state that the Board is either for or against hydraulic fracturing." Town Board Meeting Minutes, July 5, 2012. Accessed at http://townofcolesville.org/content/Generic/View/9:field=documents;/content/Documents/File/62.pdf.

[37] Town of Windsor Supervisor Randy Williams defended his vote on the pro-drilling resolution while holding a mineral rights lease, saying "I did not feel there was a conflict with this because, as was stated earlier, Resolution 24 did not say yes you can drill or no you cannot. All it said plain and simple let the DEC make up their mind and go from there." Matt Richmond, Innovation Trail, July 13, 2012. Accessed at http://innovationtrail.org/post/resolutions-supporting-decs-fracking-decision-spread.

[38] Property records on file with Broome County show Stephen Flagg has an interest in a lease held by Minerva Flagg, *see* Appendix C-2. The *Press & Sun-Bulletin* reported in 2012 that Stephen Flagg had an active mineral rights lease. *See AG Inquires About Conflicts on Fracking Votes in Southern Tier*, Steve Reilly, *Press & Sun-Bulletin*, December 11, 2012. Accessed at

■ Councilmember Glenn Winsor has been active in the leadership of the Windsor/Colesville Group Oil and Gas Lease Pool.[39] The *Press & Sun-Bulletin* reported that Winsor had an interest in a mineral rights lease.[40]

Town of Sanford:

■ Long-time Supervisor Dewey Decker, owner of DewDec Farms, and Dawn Decker held gas development leases with XTO Energy for 71.3 acres in the Town of Sanford at the time of the May 8, 2012 vote, according to Broome County property records.[41] Decker told the *Philadelphia Inquirer* that he helped form the local landowners' coalition and negotiate leases for its members.[42] The group negotiated a lease price of $2,411 per acre, plus royalties, netting Decker $2.9 million for his 1,200 acres, according to a news report.[43] While Supervisor Decker, on advice of the Town Attorney, recused[44] himself from several Town Board gas development issue votes, he did vote on XTO Energy's request for water withdrawal and did expedite consideration of the JLCNY resolution, which was passed on July 12, 2002.[45]

■ Town Clerk Sylvia Ditewig held a gas development lease with Edwin Ditewig for 3.19 acres in the Town of Sanford, New York at the time of the May 8, 2012 vote.[46] The lease also is with XTO Energy.

■ Town Councilmember David Sexton and Anita Sexton held a gas development lease with XTO Energy at the time of the May 8, 2012 vote, according to Broome County records.[47]

---

www.pressconnects.com/article/20121211/NEWS11/312110060/AG-inquires-about-conflicts-fracking-votes-Southern-Tier.

[39] *See* www.windsorny.org/forms/gas-lease-pool.pdf.

[40] *Press & Sun-Bulletin*, December 11, 2012. Accessed at www.pressconnects.com/article/20121211/NEWS11/312110060/AG-inquires-about-conflicts-fracking-votes-Southern-Tier.

[41] Several other property owners with the last name Decker in the Town of Sanford also appear to hold gas leases, initially with XTO Energy. Broome County records show an assignment of royalty interests dated March 10, 2010, for the following persons with property in Sanford: Dewey A. Decker and Dawn M. Decker; Friend L. Decker and Irene Louise Decker; Michael F. Decker & Beth, aka Beth Anne Decker; Wilbur D. Decker and Laura Decker; Clifford A. and Ruth A. Decker; and Jane Decker. *See* Appendix C-4 through 7.

[42] *N.Y. to Rule on Fracking, Which Could Affect the Delaware River Basin*, Sandy Bauers, *Philadelphia Inquirer*, August 29, 2012. Accessed at http://articles.philly.com/2012-08-29/news/33451649_1_shale-deposits-deep-underground-marcellus-shale-natural-gas.

[43] *Id.*

[44] While Mr. Dewey recused himself from the formal vote, there is evidence that he was involved in advancing the resolution, *See* Appendix C-8.

[45] Letter from Town Attorney Herbert A. Kline to Assistant Attorney General Judith C. Malkin dated October 26, 2012. Mr. Kline does not indicate whether Supervisor Decker also recused himself from actions regarding the Town of Sanford's gas development lease with XTO Energy, approved on or about June 2008. *See* Appendix C-9, 10.

[46] *See* Ditewig property records in Appendix C-4.

■ The Town of Sanford itself held a gas development lease with XTO Energy for 15 acres of land at the time of the May 8, 2012 vote, according to Broome County records.[48]

Town of Windsor:

■ Randy Williams, the Town of Windsor's long-time supervisor, who reportedly worked for "a major oil company for 32 years,[49] held a gas development lease on properties in the Town of Windsor totaling some 30 acres at the time of the May 2, 2012 vote, according to records on file with Broome County.[50]

This may be but the tip of the iceberg in terms of possible conflicts presented by municipal officials that have gas development contracts for their properties.[51] A thorough search for potential conflicts would require the names and addresses of family members and the identities of the business interests of public officials, their families and associates. Since NYPIRG conducted only a limited public records search and did not search in each county where gas development companies have been signing up property owners, we cannot say whether other public officials have/had similar conflicts of interest. And, of course, this is but one issue and one set of potential conflicts to consider among the myriad issues that come before local government.

---

[47] *See* Appendix C-11. Reference to Sextons on C-13. Also *See AG Inquires About Conflicts on Fracking Votes in Southern Tier*, Steve Reilly, *Press & Sun-Bulletin*, December 11, 2012, Accessed at www.pressconnects.com/article/20121211/NEWS11/312110060/AG-inquires-about-conflicts-fracking-votes-Southern-Tier.

[48] *See* Appendix C-12.

[49] *Resolutions Supporting DEC's Fracking Decision Spread, Matt Richmond*, *WSKG, Innovation Trail*, July 13, 2012. Accessed at http://innovationtrail.org/post/resolutions-supporting-decs-fracking-decision-spread.

[50] *See* Appendix C-14, 15.

[51] The holding of real property gas development leases is not the only type of conflict presented by gas development companies. The oil and gas industry is working on the Millennium Pipeline and is involved in a variety of business activities in New York that could present conflicts of interest for local government officials.

DRILLING DOWN:
SPENDING ON LOCAL LOBBYING OFTEN FLIES UNDER THE RADAR

New York's Two Tier Lobbying Disclosure Law

New York requires that lobbyists and their clients disclose information about their spending and activities to influence state and local government decisions by those spending at least $5,000 or more in a calendar year. The law requires semi-annual reports by lobby clients and bi-monthly reports by lobbyists detailing what part of government they lobbied, what issues they lobbied upon and how much they spent.[52] The state lobby disclosure law is tremendously important in helping the public understand who is attempting to influence government decision makers—on budgets, legislation, regulations and procurement, for example—and who they are hiring to represent their interests, and how much they are spending to achieve their lobbying goals.

However, the state law local lobbying reporting provision only requires disclosure related to lobbying local government jurisdictions, such as counties, cities, towns and villages, with more than 50,000 residents.[53] The overwhelming majority of towns and villages in upstate New York—and in the Marcellus Shale Drilling Region in particular—do not meet this threshold. Accordingly, the public is left in the dark about who is trying to influence many local governments and how much they are spending.

NYPIRG's review of information gleaned through FOIL, news reports and other information sources indicate a variety of groups have been active on gas drilling issues at the local government level. In particular, 2012 saw a spate of activity after *The New York Times* article reported that the governor would consider local community support for drilling as part of whether fracking would be permitted in Marcellus Shale Drilling Region. DEC Commissioner Martens made similar comments.[54]

---

[52] Legislative Law section 1-h (lobbyist reports) and 1-j (client reports).

[53] Legislative Law, section 1-c(k). This effectively leaves out huge portions of the state, including virtually every town in the Marcellus Shale region. The Joint Commission on Public Ethics, which oversees the administration and enforcement of the state's local lobbying law, maintains a website that identifies counties, towns, cities and villages in the state with 50,000 or more residents. The overwhelming number of towns and villages in the New York Drilling Region do not meet this threshold.
See www.jcope.ny.gov/Local%20Lobbing%20Municipality%20List%20SC%20revisions.pdf.

[54] *See, e.g.*, *Martens: Local Opposition to Fracking Will Be Considered*, Jon Campbell, *Star Gazette*, April 26, 2012. Accessed at http://archive.stargazette.com/article/20120426/NEWS11/120426020/Martens-Local-opposition-fracking-will-considered.

It was no secret that JLCNY was active in promoting approval by towns and villages of a pro-drilling resolution it had drafted.[55] In addition, the various landowner groups that had educated their members, negotiated leases with gas exploration companies and engaged in activities in support of drilling, were pressing for approval of the resolutions.

The JLCNY drafted and quarterbacked the pro-drilling resolution campaign in 2012—essentially an effort to persuade local towns and villages to adopt statements in support of gas development as a way to lock in their policy position on fracking and also as a way to indirectly lobby the governor and DEC—as well as state legislators on fracking.

JLCNY attorney Scott Kurkoski appeared at the Town of Maine board meeting of June 19, 2012, *before* the Town approved its resolution, urging support for gas development saying it would bring progress and tax monies to the town.[56] Kurkoski also appeared at a Town of Maine board meeting voicing support for gas drilling *after* the Town approved its pro-drilling resolution.[57]

As the *Press & Sun-Bulletin* reported about the push in early 2012 at town boards in Broome County:

> "The resolution was written and distributed to town leaders by the Joint Landowners Coalition of New York after reports emerged that local opinions on natural gas drilling may be taken into account when the state begins issuing permits for wells that would be fracked.[58]

---

[55] "We put it [the resolution] together, and it's just to show support for gas drilling in New York State," said JLCNY president Dan Fitzsimmons. "There's enough bans going on, and I think it's time that people show support too." *See Colesville Board Opposes Gas Drilling Ban, Press & Sun-Bulletin*, May 4, 2012. Accessed at www.pressconnects.com/article/20120504/NEWS01/205040397/Colesville-board-opposes-gas-drilling-ban.

[56] Town of Maine Town Board Meeting Minutes, June 19, 2012. Accessed at http://townofmaine.org/content/MinuteCategories/View/26/2012:field=minutes;/content/Minutes/View/370

[57] Town of Maine Town Board Meeting Minutes, September 18, 2012. Accessed at http://townofmaine.org/content/MinuteCategories/View/26/2012:field=minutes;/content/Minutes/View/377

[58] *Broome Towns Facing Opposition to Fracking Resolutions*, Steve Reilly, *Press & Sun-Bulletin*, July 10, 2012. Accessed at http://www.pressconnects.com/article/20120710/NEWS01/207100393/Broome-towns-facing-opposition-fracking-resolutions. The JLCNY draft resolution template and instructions for its use can be accessed through the JLCNY website. *See* www.jlcny.org/site/index.php/town-resolutions-efforts-and-landowner-info/1347-town-resolution-to-support-nydec-efforts-and-findings.

Despite clear indicia of advocacy at the local level in 2012—some 100 local governments approved somewhat similar pro-drilling resolutions or resolutions in opposition to a ban[59]—NYPIRG's search for information on local lobbying in 2012 uncovered no reporting about such activities.[60]

A clear example of the problem is presented by the absence of information on lobbying by the JLCNY. The Joint Landowners Coalition of New York, Inc. is listed as a lobby client with the Joint Commission on Public Ethics ("JCOPE"). In its 2012 client semi-annual reports, JLCNY reported on lobbying the Governor's office, Senate, Assembly and DEC. JLCNY reported no local lobbying activity in its two semi-annual client reports filed with JCOPE. The lobby firm hired by JLCNY, Empire Advocates, was paid $72,000 in 2012 to lobby on its behalf. According to its 2012 lobbyist disclosure filings, Empire Advocates lobbied only the governor's office, Senate, Assembly and DEC on behalf of JLCNY in 2012. Empire Advocates identified the issue areas it would lobby on as "moratorium on horizontal hydrofracking; home rule for municipalities with regard to hydrofracking activities." Empire Advocates identified specific pieces of state legislation it weighed in on, but no local government lobbying.

Thus, neither the JLCNY as a client nor its paid lobby firm reported spending any money, time or effort in ginning up local governments to consider and pass resolutions. This is true despite JLCNY taking credit for orchestrating the resolution campaign, pushing it at local meetings, in the media and on its website.[61] In addition, the JLCNY announced on November 27, 2012, that it was part of a new campaign calling on the state to move forward with gas development.[62]

Clean Growth Now ("CGN") also registered as a lobby client with JCOPE for 2012, retaining Albany-based Capital Advocates and Williamsville-based Stephen Sementilli to lobby on its behalf. CGN paid these lobbyists a combined

---

[59] *Fracking Goes Local*, Joseph De Avila, *The Wall Street Journal*, August 29, 2012. Accessed at www.wsj.com/articles/SB10000872396390444327204577617793552508470.

[60] NYPIRG searched the JCOPE databases and the Open Government portal at the New York State Office of the Attorney General.

[61] *Broome Towns Facing Opposition to Fracking Resolutions*, Steve Reilly, *Press & Sun-Bulletin*, July 10, 2012. Accessed at http://www.pressconnects.com/article/20120710/NEWS01/207100393/Broome-towns-facing-opposition-fracking-resolutions. The JLCNY draft resolution template and instructions for its use can be accessed through the JLCNY website. *See* www.jlcny.org/site/index.php/town-resolutions-efforts-and-landowner-info/1347-town-resolution-to-support-nydec-efforts-and-findings.

[62] *New York Groups Call for An End to Delays Stalling Responsible Development of Shale Gas*, News Release, November 27, 2012. Accessed at www.jlcny.org/site/index.php/press-room/jlcny-press-releases/1433-ny-hf-ad-campaign-press-release.

total of $34,000 for 2012. While the two CGN semi-annual client reports identify "DEC, state legislators, and city/county officials" as the targets of its lobby efforts, no specific local government target is identified. The reports state that "hydraulic fracturing" and the "Supplemental Generic Environmental Impact Statement" were to be the subject and items they expected to lobby. No local government is identified as being the target of CGN's lobbying efforts by either the organization itself or its outside lobbyists.

NYPIRG's review identified other groups and individuals that appeared to be engaged in lobbying in support of fracking at a local level, but could find no information in state databases on their activities. Information indicates local lobbying by groups and individuals may have taken place in the follow localities: the Town of Afton (attorney Ed Zaengle[63]); the Town of Howard (Steuben County Landowners Coalition[64]); Town of Van Etten (letter from law firm Adams, Theisen & May on behalf of Chemung County Gas Coalition, with reference to support from Chemung County Farm Bureau[65]); and the Town of Sanford (email from Steve Herz, a county legislator at the time, landowner and leader in a landowner coalition, stating that "[t]ime is of the utmost urgency" for sending a pro-drilling letter to the governor).[66]

If any of these groups otherwise met statutory threshold requirements and lobbied local governments, pursuant to Legislative Law section 1-h(4), they are required to report about covered local lobbying activities, providing "the name of the person, organization, or legislative body before which the lobbyist has lobbied[.]"[67]

Unfortunately due to a gaping loophole in the state's lobbying law, the efforts—and the spending—by groups like JLCNY, as well as industry spending, if any, to influence local government decisions, including attempts to have local governments pressure the state on fracking, may be legally allowed to slip under the radar.

---

[63] Town of Afton, Town Board Meeting Minutes, July 12, 2012. Accessed at www.townofafton.com/assets/minutes/town/July-2012.pdf.

[64] *See* Town of Howard, Planning Board Meeting Minutes, June 21, 2012. *See* Appendix C-16, 17, 18.

[65] A copy of this letter is found at Appendix C-19 through 31.

[66] Emails from Steve Herz to town and village officials with draft letter to Governor Cuomo dated August 27, 2012, two emails time stamped 7:40 a.m. and 11:07 a.m. These emails appear to be from a private account. *See* Appendix C-32.

[67] If any of the groups met the Lobby Law's threshold criteria and lobbied public officials in local government jurisdictions of 50,000 or more residents, for example Broome County, they would be required to disclose those covered activities.

Their reporting indicates that the groups either did not meet the state lobby law's threshold requirements or that their local lobbying was confined to communities with fewer than 50,000 residents.

This is the result of fundamental defect in the state's lobbying law. As discussed, the state lobbying disclosure law carves out from the disclosure requirements efforts to persuade officials serving local government jurisdictions that do not have more than 50,000 residents. While this exemption might appear at first blush to relieve small town governments from some burden, the reality is the onus for reporting falls on the lobby client and the lobbyist—not the municipal officials. Moreover, the lobby client would still need to meet the $5,000 lobby spending threshold before it would be obliged to report—effectively exempting modest lobbying campaigns.

There is simply no good reason for this loophole to exist. Decisions by local governments clearly are of great interest to those who live within and outside the municipal borders. And, clearly, powerful special interests are keen to influence the decisions of small-town governments.

The lobby disclosure law is also less comprehensive for local government lobbying as compared to state lobbying. While the introduction of resolutions or other legislative actions is considered "lobbying" when it comes to the state Legislature, efforts to have resolutions introduced at the local government level is not considered lobbying and therefore spending on such efforts is not required to be reported.

DRILLING DOWN: INADEQUATE LOCAL OPENNESS POLICIES

New York's "Sunshine" Laws

The state's tandem "sunshine" laws, the Freedom of Information Law and the Open Meetings Law, are designed to make state and local governments transparent and provide ample opportunity for New Yorkers to meaningfully monitor and participate in government decision making processes.[68] The Freedom of Information Law ("FOIL") is the cornerstone of transparency, requiring that governments provide access to records—broadly defined—that they hold in the course of their work on behalf of the public and funded by taxpayers.[69] The Open Meetings Law ("OML") is intended to ensure that public bodies deliberate and make their decisions in public; that the time and place of their meetings is publicly known in advance, and that meetings are accessible for observation; and that there is a meaningful opportunity for the public to participate.

These laws are central to the ability of members of the public to understand how elected representatives and other government officials are operating on their behalf and ultimately to make informed decisions about how to cast their votes in a representative democracy.

A Mixed Bag of Responses to FOIL Requests

While a number of municipalities readily responded to the FOIL request and forwarded pertinent documents, others required a clarification of the request before furnishing records responsive to the request. Not all municipalities had a website where email addresses for local clerks could be found. As a result, we located town hall telephone contact information and calls were placed to ascertain if an email was available. In all, there were 17 municipalities that either did not have email or an email address could not be ascertained through reasonably diligent search. In these instances the FOIL request was faxed.[70] In many instances, follow up phone calls were made to the clerks and in some municipalities, a number of calls were required. Individual clerk's office site visits were made to towns that either reported there were large volumes of

[68] The Freedom of Information Law is found in New York's Public Officers law, sections 84-90. The Open Meetings Law is found in Public Officers Law section 100-111. The Committee on Open Government was established by the Legislature to provide information on these laws and issue advisory opinions on related topics. *See* www.dos.ny.gov/coog/.

[69] Government transparency and accountability also are advanced by other laws requiring disclosure, including the Election Law (campaign donations and spending); Legislative Law (certain state and local lobbying); and ethics laws (General Municipal Law and local ethics codes).

[70] A listing of these localities is contained in Appendix B.

material to review as potentially responsive to our request and/or the request required someone to review compiled records to choose for reproduction. Visits were made to the towns of Hancock, Delaware, Preston, Newark Valley, Van Etten, Sanford and Chenango.

Two towns, Holland and Busti, refused to comply with the FOIL request. Holland would not comply on the grounds that the FOIL request, which was a letter that was emailed as both an attachment and in the body of the email to the Town Clerk, needed to "be in writing."[71] Busti said responding was too difficult as the town "did not keep computerized keyword indexes of all document types."[72] The Town of Busti clerk noted that while she was new to the office, she did consult with the long time town attorney and that "he advised that neither natural gas drilling nor hydrofracking have been the topic of any resolution or local laws. . . ." However, an online search revealed that the town passed a resolution in support of gas drilling on September 20, 2010.[73]

Accordingly, the information for these towns was derived from their town board meeting minutes, which were available on their websites, as well as through online research.

In addition to sending FOIL requests to the municipalities, NYPIRG sent a request to the New York State Attorney General's office on May 22, 2014 and a response was received June 26, 2014.

Open Meetings Law: Too Often Honored in the Breach

Compliance with the OML shows that many towns violated the spirit if not the letter of the law's public notice and document availability requirements. In some instances pro-drilling resolutions—which had been circulating for some time—were introduced without notice or making copies available to the public for inspection. Some local governments appeared to "game" the OML by failing to provide notice that the pro-drilling resolutions would be considered and taking them up unannounced late in the public meeting when all or most of the local residents had left.

To achieve its purpose, the OML aspires to ensure that the public has sufficient notice of government meetings and can follow matters that will be

---

[71] *See* Appendix C-33.
[72] *See* Appendix C-34.
[73] Town of Busti Town Board Meeting Minutes, September 22, 2010. Accessed at www.townofbusti.com/minutes/2010/zba092210.pdf. *Also see Helping Plan Busti's Future; Survey Will Be Used for Comprehensive Plan*, Dennis Phillips, *Post-Journal* (Jamestown), September 20, 2010. Accessed at http://post-journal.com/page/content.detail/id/567242.html.

taken up at those meetings. In addition, as of February 2, 2012, the law obligates local governments to take reasonable efforts to make available in advance those documents that are scheduled to be the subject of the noticed meeting.[74] Records pertinent to the public meeting may be made available online or in hard copy before or at the meeting.

The recent amendment to OML section 103(e) responds to the longstanding complaints from members of the public that they could not meaningfully observe and participate in local government meetings without access to the documents that were the subject of the discussion. As the Committee on Open Government explained in an Advisory Opinion:

> "The amendment addresses two types of records: first, those that are required to be made available pursuant to FOIL; and second, proposed resolutions, law, rules, regulations, policies or amendments thereto. When either is scheduled to be discussed during an open meeting, the law requires that copies of records must be made available to the public prior to or at the meeting, upon request upon payment of a reasonable fee, and, when practicable, online prior to the meeting. The amendment authorizes an agency to determine when and what may be 'practicable' in making records available."[75]

This provision, effective February 2012, was in place when the full-court press was underway to get approval for municipal pro-drilling resolutions.

While there are examples of towns such as Afton,[76] which provided notice of the consideration of the pro-drilling resolution and allowed equal time to a private attorney advocating in support of drilling and a councilmember opposing the resolution, there were many towns that provided no notice and appeared to subvert the intent of the OML. In effect, some towns appear to have "gamed" the OML notice and document availability requirements thereby sandbagging the public.

The following examples of at least questionable compliance with OML emerged from NYPIRG's review of municipal actions around consideration of the pro-drilling resolutions.

---

[74] *Effective February 2, 2012: Disclosure of Records Scheduled for Discussion at Open Meetings*, Committee on Open Government. Accessed at www.dos.ny.gov/coog/RecordsDiscussedatMeetings.html.

[75] OML-AO-5324, Committee on Open Government, September 12, 2012. Accessed at http://docs.dos.ny.gov/coog/ftext/2013/5324.html.

[76] While Afton's process was a model of transparency compared to the actions of most other towns that we reviewed, Afton ultimately approved the pro-drilling resolution *against the advice* of Town Attorney James Downey by a vote of four to one. A copy of Downey's letter is included in Appendix C-35.

■ Town of Colesville. We could find no notice provided to the public that the pro-drilling resolution would be considered. According to a news report "[t]he resolution was introduced May 3 at the end of a meeting and passed on the spot."[77] Another news report noted that it passed before "an audience of one." Resident Mary Goodfellow told the *Press & Sun-Bulletin* that "[t]hey kind of did it under the table, under the radar," noting that a copy of the resolution was passed out after other town business had been taken care of and all other residents had left except her.[78]

■ Town of Delaware. We could identify no notice provided to the public that the pro-drilling resolution would be considered. According to the Town's official meeting minutes, the June 20, 2012 resolution was introduced by Councilmember Roeder seemingly spontaneously in response to an audience member's request that the board "look into the issue of gas drilling and how it's going to impact the town."[79] The town board minutes describe what unfolded as follows: "Councilman Roeder responded; a heated discussion ensued regarding gas drilling, and resulted in the following resolution being offered by Councilman Roeder. Councilman Steppich seconded; Councilman Gain then stated that the Board had already passed a resolution and voted on it."[80]

■ Town of Guilford. We could identify no notice provided to the public that the pro-drilling resolution would be considered. The Town board approved a JLCNY pro-drilling resolution on July 11, 2012, over the objections of the town supervisor. The meeting minutes identify it as the "Coalition Resolution" and note that the sponsor "received a copy of proposed resolution." It is noteworthy that three days before the Town passed the pro-drilling resolution, outside of its public meetings it adopted a "Policy and Procedure" on "Public Comment."[81] This policy established time limits for the public comment period and requires that "for groups of persons supporting or opposing the same position . . . a spokesperson will be designated to express the group's concerns."[82]

---

[77] *Fracking Resolution in Colesville Sparks Debate*, *WBNG 12 Action News*, July 5, 2012. Accessed at http://www.wbng.com/news/local/Fracking-Resolution-in-Colesville-Sparks-Debate-161522785.html.

[78] *Colesville Board Opposes Gas Drilling Ban*, Steve Reilly, *Press & Sun-Bulletin*, May 4, 2012. Accessed at www.pressconnects.com/article/20120504/NEWS01/205040397/Colesville-board-opposes-gas-drilling-ban.

[79] Town of Delaware, Town Board Meeting Minutes, June 20, 2012, page 3. Accessed at http://townofdelaware-ny.us/cmsadmin/uploads/BdMinJune20_2012_001.pdf.

[80] *Id.*

[81] Town of Guilford, Policy and Procedure, Public Comment, July 8, 2012, Accessed at www.guilfordny.com/assets/policies/Policy_Public_Comment_080812.pdf.

[82] *Id.* at para. 4. Ironically, the Town appears to have violated paragraph 9 of its new Policy and Procedure for Public Comment, which states: "The Town Board will not likely take any action on

■ Town of Sanford. We could identify no notice provided to the public that the pro-drilling resolution would be considered. On May 7, 2012, at 10:31 a.m. the town clerk faxed the town attorney the following message: "Dewey [Decker, Town Supervisor] would like to pass this Resolution or a similar one tomorrow night. Copies of all Resolutions from Municipalities will be gathered and sent to the attention to [sic] the Governor by AOTV [sic]. Should we use this one or change it?"[83] On May 8, 2012, the Town of Sanford approved the JLCNY pro-drilling resolution.[84] The Town Board banned all discussion of natural gas drilling on September 11, 2012, on the grounds that the town board meetings were becoming fracking debates.[85] Prior to that, the Town passed a resolution limiting the period for discussion of gas drilling.[86] In both cases, they allowed for submission of written comments. The Natural Resources Defense Council and Catskill Citizens for Safe Energy filed a federal lawsuit claiming residents' free speech rights were being violated.[87] The town subsequently rescinded its ban and the suit was dropped.[88]

---

the subject for which they [sic] have not had the opportunity to fully investigate and gather complete information."

[83] Fax cover sheet from Town of Sanford to Town Attorney, May 7, 2012. *See* Appendix C-8.

[84] Town of Sanford Town Board Meeting Minutes, May 8, 2012. *See* Appendix C-38 through 43.

[85] Town of Sanford Town Board Meeting Minutes, September 11, 2012. *See* Appendix C-44 through 48.

[86] Town of Sanford, Town Board Meeting Minutes, August 14, 2012. *See* Appendix C-49 through 54.

[87] *New York Fracking Gag Order Violates Freedom of Speech*, NRDC Environmental News: Media Center, February 12, 2013, Accessed at www.nrdc.org/media/2013/130212.asp

[88] *New York Town Repeals Fracking Gag Order After Free Speech Lawsuit*, NRDC Environmental News: Media Center, April 17, 2013. Accessed at www.nrdc.org/media/2013/130417.asp.

DRILLING DOWN:
CONCLUSION: LOCAL GOVERNMENTS STANDING ON SHAKY GROUND

Based upon NYPIRG's review of thousands of pages of documents, including town meeting minutes, records obtained through the Freedom of Information Law, public record searches, news reports and other publicly available information, a picture emerges of local governments striving to meet their myriad obligations, under enormous pressures from business interests and residents, all being transacted in a legal environment that allows ethical laxity and little prospect of enforcement.

While it is possible that at least in some circumstances local governments violated the spirit (if not the letter) of applicable laws, in most cases the laws are either arguably inapplicable or so weak that actions may well be considered to have substantially complied with the state's local government statutes.

Our review of fracking-related actions by 59 local governments in the Marcellus Shale Drilling Region uncovered evidence of troubling activities with respect to:

- The appearance of possible conflicts of interest for town supervisors and town board members on fracking-related actions.
- The apparent lack of timely, accessible information on public officials' oil and gas leases and other financial interests that bear on whether a conflict may exist.
- The apparent violations of the spirit—if not the letter—of the Open Meetings Law in failure to provide notice of consideration of controversial resolutions, including the spontaneous introduction of a pro-drilling resolutions, in an apparent attempt to game OML.
- The apparent efforts to avoid public observation and participation in fracking resolution decisions.

While the troubling issues identified in this review were not necessarily evident in each of the town actions reviewed, concerns about the way local governments addressed the fracking issue abound.[89]

[89] The problems with the ethics and disclosure laws applicable to local governments mean that groups that oppose fracking in general and the pro-drilling resolutions in particular, likely have not reported their activities. The remedies for these deficiencies that NYPIRG recommends would apply with *equal* force to advocates on all sides of an issue, thereby giving the public more information about who is trying to influence local governments on the range of issues under consideration.

Town of Sanford: The Poster Child for Local Government Ethics Reform

Perhaps no town better illustrates the problems created by the confluence of big industry pressures, possibly self-interested public officials and weak ethics and transparency laws than the Town of Sanford. The Town of Sanford is a prime example of why the current laws do not safeguard the impartiality of decisions made at a local government level.

The Town of Sanford itself holds a gas lease.[90] The Town's supervisor holds gas development leases and reportedly received nearly $3 million in advance payments—apparently without having pulled any gas or oil out of the ground.[91] Two other councilmembers apparently held gas development leases at the time of their 2012 pro-drilling resolution votes.[92] All the leases were originally with XTO Energy, owned by Exxon-Mobil. XTO Energy also was the original partner to the Town's gas development agreement. The Town of Sanford also has approved giving XTO Energy access to a town lake to withdraw up to 250,000 gallons of fresh water each day for industrial operations.[93] Related agreements with the gas industry interests also have been approved by the Town of Sanford.[94]

With respect to public participation, the Town of Sanford hustled through the JLCNY resolution without public notice, apparently spurred to act quickly by a county legislator who also was active in a landowner's coalition.[95] After tiring of hearing from fracking critics at public meetings, the Town of Sanford adopted a content-based policy of banning oral comments about fracking at its public

---

[90] *See* Appendix C-12.

[91] *Press & Sun-Bulletin*, December 11, 2012. Accessed at www.pressconnects.com/article/20121211/NEWS11/312110060/AG-inquires-about-conflicts-fracking-votes-Southern-Tier.

[92] *See* Appendix regarding leases of councilmembers Ditewig (C-4) and Sexton (C-13). *Also see AG Inquires About Conflicts on Fracking Votes in Southern Tier*, Steve Reilly, *Press & Sun-Bulletin*, December 11, 2012, Accessed at www.pressconnects.com/article/20121211/NEWS11/312110060/AG-inquires-about-conflicts-fracking-votes-Southern-Tier.

[93] DEC Commissioner Joseph Martens urged the Delaware River Basin Commission to not approve the water withdrawal. *See* minutes of DRBC December 8, 2011. Accessed at www.state.nj.us/drbc/library/documents/12-8-11_minutes.pdf.

[94] In 2011, Sanford passed Resolution No. 52 "Authorizing Supervisor to Execute Road Use and Crossing Agreement with Bluestone Gas Corporation of New York, Inc." for the purposes of constructing natural gas gathering lines and/or related appurtenances in the town. *See* Town of Sanford, Town Board Meeting Minutes, October 11, 2011, described in Appendix C-9.

[95] Emails from then-County Legislator Steve Herz to town and village officials with draft letter to Governor Cuomo dated August 27, 2012, two emails time stamped 7:40 a.m. and 11:07 a.m. These emails appear to be from a private account. *See* Appendix C-32.

meetings.[96] While this policy applied equally to fracking supporters, given that several of the Town councilmembers held leases, the Town had already approved gas development actions, and the JLCNY resolution had already been passed, fracking supporters in the Town may have felt little need to discuss their pro-drilling views. But critics were shut out from communicating directly in the town's public meeting forum about a single topic of keen public interest: gas drilling.

[96] *New York Town Repeals Fracking Gag Order After Free Speech Lawsuit*, NRDC Environmental News: Media Center, April 17, 2013. Accessed at www.nrdc.org/media/2013/130417.asp.

DRILLING DOWN:
TIME TO STRENGTHEN LOCAL ETHICS LAWS

The conflicts of interest presented and potential for abuse and scandal when well-resourced business interests seek local government actions, such as legislation, resolutions, land use approvals, contracts or partnerships are not new. As a long time political watchdog told *The New York Times* nearly a quarter century ago:

> "Even though the focus on ethics and conflicts of interest and influence peddling is on Washington, the reality is that it is mainly in local communities where economics and politics come together so clearly," said Thomas E. Mann, director of governmental studies at the Brookings Institution. "That's been true for a very long time in a range of enterprises."[97]

Without question, the problems with transparency, potential conflicts and departures from local government best practices identified in this report are not new and are not limited to the fracking issue. These issues arise as a function of the prospects of high-stakes profits, weak ethics laws and limited or non-existent enforcement. These complaints were raised in the 1970s and 1980s when cable television companies pressed to get exclusive franchises in areas across the state.

1987 Cable TV Juggernaut

Commenting in 1987 on the scandals surrounding the awarding of cable television franchises in New York City, then-U.S. Attorney Rudolph Giuliani said that even if the side deals involving legal and consulting fees were not subject to indictment, "they surely should be prohibited by law."[98] Giuliani continued:

> "These attempts on the part of political officials and so-called community leaders to grab a piece of what was going on are the reason why the citizens of the outer boroughs have not had cable this long, because this is

---

[97] *Rewards of Public Service Are Growing*, Martin Tolchin, *The New York Times*, May 13, 1990. Accessed at www.nytimes.com/1990/05/13/weekinreview/rewards-of-public-service-are-growing.html?module=Search&mabReward=relbias%3Ar%2C{%221%22%3A%22RI%3A7%22}. This article notes the tremendous growth of then-Senator Alphonse D'Amato's brother's law firm after the D'Amato's election in 1980, including through using the Senate staff for information on government contracts.

[98] *Cable TV: A Long History of Delays and Scandals*, Bruce Lambert, *The New York Times*, September 27, 1987. Accessed at www.nytimes.com/1987/09/27/weekinreview/the-region-cable-tv-a-long-history-of-delays-and-scandals.html?module=Search&mabReward=relbias%3Ar%2C{%221%22%3A%22RI%3A7%22}.

being treated like a bonanza for the politicians rather than an important service for the citizens. . . ."[99]

2007 Wind Energy Farm Conflicts

Similar issues also surfaced in the push by alternative energy companies to site wind energy farms in upstate New York. As outlined by *The New York Times*, the conflicts of interest included town board members standing to make money through energy leases and through their outside business sales to energy companies related to construction for the wind projects.[100]

2014 Casino Gambling Push

NYPIRG's recent review of spending by casino gambling interests to influence state and local decisions through lobbying spending and campaign donations pointed up the problems under the current laws. While NYPIRG was able to identify at least $11 million spent by gambling interests on lobbying at the state level and in campaign contributions, it was impossible to analyze spending on local lobbying because the laws do not require disclosure.[101]

Clearly, casino interests have been aggressively lobbying local governments to gain support, with much of this likely to fly under the radar as a result of the state local lobbying disclosure loophole. An indication of the intensity of the local lobbying efforts is that global casino giant Genting hired a consulting firm that reportedly was offering a $75 per head bounty to recruiters, with the potential to earn "a minimum of $300 and possibly thousands," for turning out attendees to a site selection hearing held by the New York Gaming Facility Location Board in Poughkeepsie.[102]

---

[99] *Id.*

[100] *In Rural New York, Windmills Can Bring Whiff of Corruption*, Nicholas Confessore, *The New York Times*, August 18, 2008. Accessed at www.nytimes.com/2008/08/18/nyregion/18windmills.html?pagewanted=all.

[101] *Casino Interests Spend Big in New York*, Joseph Spector, *Democrat & Chronicle*, July 9, 2014. Accessed at www.democratandchronicle.com/story/news/2014/07/08/casinos-lobbying-political-donations/12386579/. The full report is *Casino Interests Pump at Least $11 Million into Lobbying and Campaign Donations; Analysis Reviews Campaign Donations and Lobbying Spending of Casino Bidders; Much Spending May be Unreported*, NYPIRG, July 17, 2014. Accessed at www.nypirg.org/pubs/goodgov/2014.07.07_NYPIRG_casino_money.pdf.

[102] Under the state lobbying law these "astroturf" lobbying costs designed to influence a state panel—not a small local government—are required to be reported. The same actions designed to influence a local government, however, would escape if the municipality had fewer than 50,000 residents. *See Genting Consultant Offers $75 for Local Supporters*, Dana Rubenstein, *Capital New York*, September 22, 2014. Accessed at www.capitalnewyork.com/article/albany/2014/09/8553061/genting-consultant-offers-75-local-supporters.

These concerns will surely continue to surface as the state moves to revamping the energy marketplace in New York to address energy distribution problems, encourage local energy production, spur alternative energy use, and create incentives for residential users to reduce and/or shift their energy use through the "Reforming the Energy Vision" ("REV") process advanced by the governor.[103] For example, one aspect of the REV proceeding is that local governments may be put in the role of negotiating energy contracts for the local residents under a "Community Choice Aggregation" model. This raises the prospects of cable television/wind energy/casino siting/fracking redux at the community level.

Wind Energy Code of Ethics

Some progress recently was made in this area by then-Attorney General Andrew Cuomo's Wind Energy Task Force and Model Code of Conduct.[104]

As reported by *The New York Times*, during the mid to late 2000s, wind energy companies were accused of co-opting local government officials by signing lucrative rights-of-way with them, offering to contract with the officials' outside businesses, hiring public officials and their families, and even blatantly offering cash as an inducement.[105]

After conducting an investigation over several months, Attorney General Cuomo announced that he had secured agreements from two major wind energy companies to adhere to a "Code of Conduct" in their efforts to secure local approvals for wind farms.[106] Cuomo also announced the creation of a Wind Energy Task Force to monitor compliance with the Wind Energy Ethics Code, review complaints about wind energy practices and forward complaints alleging Code violations to the Attorney General's Office.

The Wind Industry Ethics Code is a voluntary agreement between the Attorney General's office and the signatory wind energy companies. Then-Attorney General Andrew Cuomo described the investigation as follows:

> "The Wind Industry Ethics Code is a result of the Attorney General's investigation into, among other things, whether companies developing wind farms improperly sought land-use agreements with citizens and

[103] *Governor Cuomo Announces Fundamental Shift in Utility Regulation*, April 24, 2014. Accessed at www.governor.ny.gov/press/04242014Utility-Regulation.
[104] Office of the Attorney General, *See* www.ag.ny.gov/press-release/attorney-general-cuomo-establishes-code-conduct-wind-energy-companies-operating-new.
[105] As in the case of fracking, the well-financed wind energy and casino interests are seeking local approvals primarily—if not exclusively—in economically-challenged communities.
[106] The investigation concluded with companies voluntarily signing on to the Code of Conduct without company-specific findings or any penalties paid.

public officials, and whether improper benefits were given to public officials to influence their official actions relating to wind farm development."[107]

In some ways the Wind Energy Ethics Code went beyond minimum municipal ethics standards established under state law, in particular by placing more restrictions and obligations on private wind energy developers than otherwise required. Noteworthy provisions included banning wind companies from hiring local government employees and their relatives if the government employee had a role in wind farm development issues and tightening the gift restrictions to match the state's more stringent standards. It also required wind energy companies to publicly disclose the nature and scope of public officials' and their relative's interests in any property to be developed by the company. Pursuant to the Code of Conduct, all easements to use property for wind farm development must be in writing, provide the names and addresses of the parties, describe the subject property and include the essential terms of the agreement, including the monetary consideration and a good-faith estimate of compensation, and be filed with the county clerk. This requirement is applicable to all easements, not just those for property owned by public officials and their relatives.

The Wind Industry Ethics Code represented a clear acknowledgement that state and local ethics laws, lobbying disclosure laws and the prospects of enforcement were wholly inadequate. While the Code represented a step forward, for a variety of reasons it was insufficient to close the huge loopholes and gaps in the transparency and ethics laws applicable to influence peddling and decision making at the municipal government level.[108]

In 2010, Comptroller Thomas DiNapoli released a "*Model Code of Ethics*" for adoption by local governments after an audit by his office found widespread

---

[107] *Attorney General Cuomo Establishes Code of Conduct for Wind Energy Companies Operating in New York*, October 30, 2008. Accessed at www.ag.ny.gov/press-release/attorney-general-cuomo-establishes-code-conduct-wind-energy-companies-operating-new. Subsequently the Attorney General announced that 14 companies joined the initial two signatories for a total of 16 companies, said to represent more than 90% of wind farm development in the state, signing on to a revised Code of Conduct in July 2009. *See Attorney General Announces New Ethics Code Adopted by Wind Industry Companies Across NY*, July 29, 2009. Accessed at www.ag.ny.gov/press-release/attorney-general-cuomo-announces-new-ethics-code-adopted-wind-industry-companies.

[108] For example, the Code of Conduct only applied to wind energy companies that voluntarily signed on and only applied to one particular set of actors seeking to influence local government. An excellent discussion of the October 30, 2008 version of the Code of Conduct's strengths and limitations is set forth in *New Code of Ethics for Wind Energy Companies Doing Business in New York: A Back-Door Approach to Regulating Municipal Ethics*, Patricia E. Salkin, New York State Bar Association' "Municipal Lawyer," Winter 2009, Vol. 23, No. 1. Accessed at www.nysba.org/WorkArea/DownloadAsset.aspx?id=1802.

problems in compliance and administration of the local ethics laws.[109] Among the problems DiNapoli cited were failures to enforce financial disclosure requirements; failure of local boards of ethics to convene regularly; failure to distribute the local codes of ethics to all officials and municipal employees; and deficiencies in the local ethics laws' conformity to state minimum requirements.

Also in 2010, building on what he observed first hand as Attorney General, as a candidate for governor Andrew Cuomo laid out a clear analysis of the fundamental problems with local government ethics and transparency and made spot-on recommendations for reform. *In Clean Up Albany, Make it Work, The New NY Agenda*, the governor begins the local government chapter "*Enact a Comprehensive Municipal Ethics Plan*" with a succinct summary of the problem:

> "With all the obvious potential for conflicts of interest and significant sums of taxpayer money at stake, the current laws regarding municipal ethics are both weak and frequently unenforceable."[110]

Andrew Cuomo's 2010 campaign policy book offered both the correct diagnosis and the correct prescription for the problems that beset the state's local government ethics laws: calling for a stronger code of ethics; eliminating conflicts of interest; expanding the use of disclosure and recusal to address conflicts; better use of financial disclosure requirements; closing gift loopholes; creating local boards of ethics to boost compliance; and the creation of strong enforcement mechanisms.[111]

Unfortunately, the governor's clear-eyed recommendations have not become reality and local governments continue to operate in an environment that fosters opacity and in which conflicts of interest flourish and enforcement is the exception.

---

[109] *DiNapoli: Improvements Needed in Municipal Ethics Laws; Proposes Legislation and Provides Model Code of Ethics to Guide Local Officials*, March 18, 2010. The release, Model Code and related materials can be accessed at http://osc.state.ny.us/press/releases/mar10/031810.htm.

[110] *Clean Up Albany, Make It Work, The New NY Agenda*, Andrew Cuomo, Cuomo 2010, p. 30. Accessed at http://s3.documentcloud.org/documents/1151579/clean-up-albany-andrew-cuomo-campaign-document.pdf.

[111] *Id* at pp. 30-42.

DRILLING DOWN:
A PATH TO REFORM

> "The public is entitled to expect from its servants a set of standards far above the morals of the marketplace. Those who exercise public and political power are trustees of the hopes and aspirations of all mankind. They are the trustees of a system of government in which the people must be able to place their absolute trust; for the preservation of their welfare, their safety and all they hold dear depends upon it."[112]
>
> *Governor Thomas E. Dewey*

There is a jarring disconnect between the federal and state common law ethical standards for public officials, the lofty principles that flow from the Federalist Papers and the New York State Constitution and the state's anemic local government ethics and transparency laws. Public expectations are subverted and the integrity of local government decisions appropriately are put into question. There is little disagreement about the existence of substantial problems with New York's patchwork of local government ethics and transparency laws and plenty of agreement on what should be done to restore public trust.

Based upon NYPIRG's decades of government watchdog work and the review of local government actions with respect to fracking, NYPIRG urges that the governor, state policymakers and local public officials work to fix our broken local government ethics and transparency laws. We recommend the following:

Overhaul the municipal ethics laws:

- Strengthen conflicts of interest provisions.
- Require greater disclosure of potential conflicts by public officials, at the minimum mandating timely, proactive public disclosure of conflicts on a transactional basis; create a centralized, publicly accessible portal for this information.
- Mandate complete recusal in appropriate cases for clear conflicts of interest.

[112] Governor Thomas E. Dewey, Public Papers 10 (1954). Quoted in Restoring the Public Trust: A Blueprint for Government Integrity, New York State Commission on Government Integrity, Fordham Urban Law Journal, Vol. 18, issue 2, Article 3, (1990). Accessed at http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1341&context=ulj. This is the recommendations report of the New York State Commission on Government Integrity, including arguments in favor of sweeping reforms of the state's campaign finance and local ethics laws. It followed three years of investigations, public hearings and numerous reports.

■ Require businesses to publicly disclose the conflicts of interest of public officials, their families and their business/employment interests, with such disclosures to be easily accessed and searched.
■ Require businesses to file property development contract notices with state agencies and the local county government to identify the type of development, *e.g.*, mineral rights or wind farm, the parties, the anticipated value of the agreement and identities of public officials, similar to Attorney General Cuomo's Wind Industry Ethics Code requirements.
■ Expand the definition of local lobbying to mirror state lobby reporting so it is clear that the vast majority of municipal decisions subject to attempts to influence require reporting by lobby clients and lobbyists.
■ Establish a single state resource to provide information, guidance and public information on local government ethics issues.
■ Provide online training materials and access to ethics experts for local government officials to fully understand their obligations and restrictions under the law.
■ Boost enforcement by having a single independent entity assume oversight, investigation and enforcement of local government ethics issues and receive filings.
■ Increase penalties for ethics law violations to remove incentives for misconduct and to deter unethical actions.
■ Give residents of the state standing to enforce local ethics laws and access to attorneys' fees for vindicating the public's right to integrity in government.

Close the Lobby Law local government secrecy loophole:

■ Close the local lobbying secrecy loophole by requiring that lobby clients and lobbyists disclose all municipal lobbying as is required for other lobbying under the law.
■ Ensure that all lobby clients and lobbyists provide the same level of detail for disclosure of their local lobbying activities as required for lobbying state government.

Strengthen the Open Meetings Law to improve public participation and confidence in local government decisions:

■ Prevent local governments from "gaming the system" through the last-minute introduction of unannounced resolutions and without making the text available for public inspection prior to the public meeting. The law should require that notice of consideration of agenda items and the text of such items be available as the rule, not the exception. Local governments should be required to justify any last minute actions by presentation of the facts necessitating immediate action and the reasons why delay to

accommodate public notice and review is not practicable in the matter being advanced without notice.

■ Require that public meetings be videotaped and archived without edit on public websites along with official minutes and phase-in webcasting of local government meetings.[113]

Boost FOIL and OML compliance and efficiency:

■ Providing resources and technical expertise to municipalities so they have the infrastructure and personnel capacity to meet 21st Century transparency expectations. In addition, require agendas, minutes, etc. be posted on website.

[113] Recommendations made to the Committee on Open Government in a 2011 policy paper included ways to use technology to efficiently and effectively enhance local government transparency. The paper also makes suggestions on ways to obtain grants and access free or low-cost technology. *Evaluating the Importance of Technology and the Role of Information Providers within Local Governments in New York*, Megan Sutherland, COOG: Research Project, 2011. Accessed at www.dos.ny.gov/coog/RecordsDiscussedatMeetings.html.

APPENDIX A

Methodology

This research afforded us a look into how well — and, not well — local municipalities conduct the business of the people. The analysis for this report was based on the experience and expertise of NYPIRG's staff. The data on the resolutions and other relevant data, including public response, were gathered through a variety of means: Freedom of Information Law (FOIL) requests, telephone interviews, in-person site visits to municipalities and an extensive online search.

In all, we reviewed 59 municipalities and reached out to 58 through the use of Freedom of Information Law (FOIL) requests. Between March 17, 2014 and May 22, 2014, 42 towns and villages were sent letter requests by email and 16 by fax. Responses were received via email, fax and though the U.S. mail.

Numerous follow up phone calls were made as were individual site visits to the towns of Hancock, Delaware, Preston, Newark Valley, Van Etten, Sanford and Chenango.

Two of the towns, Holland and Busti refused to comply with the FOIL request on the grounds that it needed to be in writing and was too difficult to do respectively. Therefore, their information was derived from their respective Town Board meeting minutes, which were available on their websites, as well as online news media. A FOIL request had not been sent to the Town of Candor and, therefore, their information was obtained from their website and online news media.

In addition to sending FOIL requests to the municipalities, NYPIRG sent a request to the New York State Attorney General's office on May 22, 2014 with acknowledgement received on May 30, 2014 and response received June 26, 2014.

When deciding on a which municipality to include as a case study, NYPIRG looked at whether or not a municipality complied with requirements stipulated in New York State Open Meetings Law; whether the resolutions were based on the Joint Landowners Coalition of New York template; whether public notices for the resolution were adequate; whether there were any conflicts-of-interest for elected officials; whether the public voiced opinions, and if there was anything of interest either from the meeting minutes or news accounts.

The analysis is based on our own opinions and interpretation of the law. We believe the review and analysis provides effective good government monitoring as well as useful and relevant information synthesized from large volumes of data. The brief and simple layout enables the report to be used by the public as well as resource agencies, municipalities and other interested groups.

In particular, the laws applicable to lobbying activities in small counties, cities, towns and villages across the state and the weak codes of conduct for local government officials deprives the public of transparency and accountability and impedes enforcement of the ethics laws.

APPENDIX B

Local Governments Surveyed

Municipality	County	2010 Census	Website
Addison	Steuben	2595	none
Afton	Chenango	2851	http://townofafton.com/government/town_officials.php
Amity	Allegheny	2308	http://www.townofamity-ny.com/government.php
Ashland	Greene	784	http://www.ashlandny.com/
Avoca	Steuben	2264	none
Bainbridge T	Chenango	3308	http://bainbridgeny.org/officials/
Bainbridge V	Chenango	na	http://bainbridgeny.org/officials/
Barton	Tioga	8858	http://www.townofbarton.org/
Bath	Steuben	12379	http://www.townofbathny.org/officials
Berkshire	Tioga	1412	http://www.berkshireny.net/town-contacts.html
Binghamton	Broome	4942	http://www.townofbinghamton.com/
Bradford	Steuben	855	none
Busti	Chautauqua	7351	http://www.townofbusti.com/
Butler	Wayne	2064	none
Candor	Tioga	5305	http://townofcandor.org/content
Carrollton	Cattaraugus	1297	http://www.carrolltonny.org/
Chazy	Clinton	4284	http://www.townofchazy.com/
Chenango	Broome	11252	http://townofchenango.com/
Colesville	Broome	5232	http://townofcolesville.org/content
Conklin	Broome	5441	http://www.townofconklin.org/
Coventry	Chenango	1655	http://townofcoventryny.com/index.html
Dansville	Steuben	1842	http://townofdansvilleny.com/index.html
Delaware	Sullivan	2670	http://www.townofdelaware-ny.us/
Deposit (V)	Delaware	1712	http://www.villageofdeposit.org/
Erwin	Steuben	1809	http://www.erwinny.org/
Fremont	Sullivan	1381	http://www.fremontnewyork.us/
Geneseo Town	Livingston	10483	http://www.geneseony.org/town/index.asp
Geneseo Village	Livingston	na	http://www.geneseony.org/village/index.asp
Greene	Chenango	5604	http://www.nygreene.com/
Guilford	Chenango	2922	http://www.guilfordny.com/government/index.php
Hancock	Delaware	3224	www.hancockny.org
Holland	Erie	3401	http://www.townofhollandny.com/
Howard	Steuben	1467	none
Jasper	Steuben	1424	none
Kirkwood	Broome	5857	http://townofkirkwood.org/
Lake Luzerne	Warren	3347	http://www.townoflakeluzerne.com/
Leicester	Livingston	2200	http://www.townofleicester.org/
Lindley	Steuben	1967	http://lindleytown.blogspot.com/
Lisle	Broome	2751	none

Louisville	St. Lawrence	3145	http://www.louisvillenewyork.com/
Maine	Broome	5377	http://townofmaine.org/content
Mount Morris (T)	Otsego	4465	http://mtmorrisny.com/town-of-mount-morris/
Mount Morris (V)	Otsego	na	http://mtmorrisny.com/village-of-mount-morris/
Nanticoke	Broome	1672	http://www.townofnanticokeny.com/
New Bremen	Lewis	2706	http://townofnewbremen.weebly.com/
Newark Valley	Tioga	3946	http://www.townofnewarkvalley.com/
Nichols	Tioga	2525	none
Pittstown	Rensselaer	5735	http://pittstown.us/
Preston	Chenango	1044	none
Sanford	Broome	2407	none
Somerset	Niagara	2732	http://www.somersetny.org/
Spencer	Tioga	3153	none
Tioga	Tioga	4871	http://www.tiogacountyny.com/towns-villages/tioga/tioga-town-board.html
Urbana	Steuben	2343	http://www.townofurbana.com/
Van Etten	Chemung	1557	none
Wheeler	Steuben	1260	none
Willet	Cortland	1043	none
Windsor	Broome	6274	http://www.windsorny.org/
Woodhull	Steuben	1719	http://www.woodhullny.com/

APPENDIX C

Listing of additional records	**Page**
Property record for Stephen and Minera Flagg	C-2, 3
Property record for owners with the last name Decker in the Town of Sanford	C-4 through 7
Interest of Town of Sanford Supervisor Decker in Town action despite his recusal	C-8
Letter from Town of Sanford Attorney Kline to Assistant Attorney General Malkin	C-9, 10
Property record for Edwin Ditewig	C-4
Property record for David and Anita Sexton	C-11, 12, 13
Town of Sanford gas development lease with XTO	C-12
Property record of Randy Williams	C-14, 15
Town of Howard, planning board, minutes	C-16, 17, 18
Letter from law firm Adams, Theisen & May	C-19 through 31
Email from then-County Legislator Herz	C-32
Town of Holland, FOIL Response	C-33
Town of Busti, FOIL Response	C-34
Letter from Town of Afton Attorney Downey	C-35, 36, 37
Town of Sanford Minutes 5/8/12	C-38 through 43
Town of Sanford Minutes 9/11/12	C-44 through 48
Town of Sanford Minutes 8/14/12	C-49 through 54

BROOME COUNTY CLERK
RECORDING PAGE

[redacted]

Return To:

CHESAPEAKE APPALACHIA LLC
P O BOX 6070
CHARLSTON, WV 25362

Index	:	BOOK OF DEEDS
Book	:	02205 Page: 0536
Pages	:	0005
Instrument	:	Lease
Date	:	10/08/2007
Time	:	2:59:59
Control#	:	200700040728

FLAGG MINERVA R

Fil#2	:	TT 2007 001476
Employee ID:		GMG30953

RC2 - RECORDING	$	28.00
RCMx Basic Recording	$	19.00
STTX - TRANSFER TAX	$	0.00
CTTX - TRANSFER TAX	$	0.00
Total	$	47.00

MORTGAGE TAX

Mortgage Amount	$	.00
Basic	$	.00
Special	$	.00
Additional	$	.00
Total	$	.00

STATE OF NEW YORK
BROOME COUNTY CLERK

WARNING-THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 316-A(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH.

TRANSFER TAX

Taxable Amt	$	.00
Transfer Tax	$	.00

RICHARD R BLYTHE

Comp
Ver.
Bk.

9100503-000 1
240

PAID-UP
OIL & GAS LEASE

Lease No. ____

8/2006-NY

This Lease, made this 10th day of April, 2007, by and between Minerva R. Flagg, (Life Estate), whose address is, 47 Flagg Road, Binghamton, NY, 13901, and Stephen James Flagg, (Remaindermen), whose address is 51 Flagg Road, Apartment 3, Binghamton, NY 13904 and Christopher Robert Flagg, (Remaindermen), whose address is 35 Hall Road, Phoenixville, PA 19460, as joint tenants, with rights of survivorship, hereinafter collectively called "Lessor", and CHESAPEAKE APPALACHIA, L.L.C., an Oklahoma limited liability company, P.O. Box 6070, Charleston, WV 25362-0070, hereinafter called "Lessee".

WITNESSETH, that for and in consideration of One Dollar ($ 1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and of the mutual covenants and agreements hereinafter set forth, the Lessor and Lessee agree as follows:

LEASING CLAUSE. Lessor hereby leases exclusively to Lessee all the oil and gas including, but not limited to coal seam gas, coalbed methane gas, coalbed gas, methane gas, gob gas, occluded methane/natural gas and all associated natural gas and other hydrocarbons and non-hydrocarbons contained in, associated with, emitting from, or produced/originating within any formation, gob area, mined-out area, coal seam, and all communicating zones, and their liquid or gaseous constituents, whether hydrocarbon or non-hydrocarbon, underlying the land herein leased, together with such exclusive rights as may be necessary or convenient for Lessee, at its election, to explore for, develop, produce, measure, and market production from the Leasehold, and from adjoining lands, using methods and techniques which are not restricted to current technology, including the right to conduct geophysical and other exploratory tests; to drill, maintain, operate, cease to operate, plug, abandon, and remove wells; to use or install roads, electric power and telephone facilities, and to construct pipelines with appurtenant facilities, including data acquisition, compression and collection facilities for use in the production and transportation of products from the Leasehold or from neighboring lands across the Leasehold, to use oil, gas, and non-domestic water sources, free of cost, to store gas of any kind underground, regardless of the source thereof, including the injecting of gas therein and removing the same therefrom; to protect stored gas; to operate, maintain, repair, and remove material and equipment.

DESCRIPTION. The Leasehold is located in the Town of Colesville, in the County of Broome, the State of New York, and described as follows:

Tax Map No. 131.04-1-6 - 47.45 Acres

and is bounded formerly or currently as follows:

On the North by lands of: Richard Kresh (131.04-1-5)
On the East by lands of: Steven Coby (131.04-1-23)
On the South by lands of: Benjamin Reynolds (131.04-1-14.1)
Raymond Capretti (131.04-1-7)
On the West by lands of: Minerva Flagg (131.03-1-31)

DESCRIPTION. The Leasehold is located in the Town of Kirkwood, in the County of Broome, the State of New York, and described as follows:

Tax Map No. 131.03-1-31 - 1.59 Acres

and is bounded formerly or currently as follows:

On the North by lands of: Timothy Bowers (131.03-1-23)
On the East by lands of: Minerva Flagg (131.04-1-6)
Richard Kresh (131.04-1-5)
On the South by lands of: Benjamin Reynolds (131.03-1-40)
On the West by lands of: Robert Keenan (131.03-1-26)
Ernest Moore (131.03-1-32)

including lands acquired from Minerva R. Flagg, by virtue of deed dated January 18, 2000 and recorded in Deed Book 1933, at Page 354, and described for the purposes of this agreement as containing a total of 49.04 Leasehold acres, whether actually more or less, and including contiguous lands owned by Lessor. This Lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor, by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land.

LEASE TERM. This Lease shall remain in force for a primary term of Five (5) years from 12:00 A.M. April 11, 2007, (effective date) to 11:59 P.M. April 11, 2012, (last day of primary term) and shall continue beyond the primary term as to the entirety of the Leasehold if any of the following is satisfied:

- (i) operations are conducted on the Leasehold or lands pooled/unitized therewith in search of oil, gas, or their constituents, or
- (ii) a well deemed by the Lessee to be capable of production is located on the Leasehold or lands pooled/unitized therewith, or
- (iii) oil or gas, or their constituents, are produced from the Leasehold or lands pooled/unitized therewith, or
- (iv) the Leasehold or lands pooled/unitized therewith is used for the underground storage of gas, or for the protection of stored gas, or
- (v) prescribed payments are made;

If Lessee's operations are delayed or interrupted as a result of any coal mining or coal related operations under any existing and effective coal lease, such delay will automatically extend the primary term of this oil and gas lease for a period of time equal to any delay or interruption.

If there is any dispute concerning the extension of this Lease beyond the primary term by reason of any of the alternative mechanisms specified herein, the payment to the Lessor of the prescribed payments provided below shall be conclusive evidence that the Lease has been extended beyond the primary term.

EXTENSION OF PRIMARY TERM. Lessee has the option to extend the primary term of this Lease for one additional term of Five (5) years from the expiration of the primary term of this Lease; said extension to be under the same terms and conditions as contained in this Lease. Lessee may exercise this option to extend this Lease if on or before the expiration date of the primary term of this Lease, Lessee pays or tenders to the Lessor or to the Lessor's credit an amount equal to the initial consideration given for the execution hereof. Exercise of this option is at Lessee's sole discretion and may be invoked by Lessee where no other alternative of the Lease Term clause extends this Lease beyond the primary term.

NO AUTOMATIC TERMINATION OR FORFEITURE.

(A) CONSTRUCTION OF LEASE: The language of this Lease (including, but not limited to, the Lease Term and Extension of Term clauses) shall never be read as language of special limitation. This Lease shall be construed against termination, forfeiture, cancellation or expiration and in favor of giving effect to the continuation of this Lease where the circumstances exist to maintain this Lease in effect under any of the alternative mechanisms set forth above. In connection therewith, (i) a well shall be deemed to be capable of production if it has the capacity to produce a profit over operating costs, without regard to any capital costs to drill or equip the well, or to deliver the oil or gas to market, and (ii) the Lessee shall be deemed to be conducting operations in search of oil or gas, or their constituents, if the Lessee is engaged in geophysical and other exploratory work including, but not limited to, activities to drill an initial well, to drill a new well, or to rework, stimulate, deepen, sidetrack, frac, plug back in the same or different formation or repair a well or equipment on the Leasehold or any lands pooled/unitized therewith (such activities shall include, but not be limited to, performing any preliminary or preparatory work necessary for drilling, conducting internal technical analysis to initiate and/or further develop a well, obtaining permits and approvals associated therewith and may include reasonable gaps in activities provided that there is a continuum of activities showing a good faith effort to develop a well or that the cessation or interruption of activities was beyond the control of Lessee, including interruptions caused by the acts of third parties over whom Lessee has no control or regulatory delays associated with any approval process required for conducting such activities).

(B) LIMITATION OF FORFEITURE: This Lease shall never be subject to a civil action or proceeding to enforce a claim of termination, cancellation, expiration or forfeiture due to any action or inaction by the Lessee, including, but not limited to making any prescribed payments authorized under the terms of this Lease, unless the Lessee has received written notice of Lessor's demand and thereafter fails or refuses to satisfy or provide justification responding to Lessor's demand within 60 days from the receipt of such notice. If Lessee timely responds to Lessor's demand, but in good faith disagrees with Lessor's position and sets forth the reasons therefore, such a response shall be deemed to satisfy this provision, this Lease shall continue in full force and effect and no further damages (or other claims for relief) will accrue in Lessor's favor during the pendency of the dispute, other than claims for payments that may be due under the terms of this Lease.

PAYMENTS TO LESSOR. In addition to the bonus paid by Lessee for the execution hereof, Lessee covenants to pay Lessor, proportionate to Lessor's percentage of ownership, as follows:

(A) DELAY RENTAL: To pay Lessor as Delay Rental, after the first year, at the rate of Five dollars ($5.00) per net acre per year payable in advance. The parties hereto agree that this is a Paid-Up Lease with no further Delay Rental and/or Delay in Marketing payments due to Lessor during the primary term hereof.

(B) ROYALTY: To pay Lessor as Royalty, less all taxes, assessments, and adjustments on production from the Leasehold, as follows:

1. OIL: To deliver to the credit of Lessor, free of cost, a Royalty of the equal one-eighth (1/8) part of all oil and any constituents thereof produced and marketed from the Leasehold.

2. GAS: To pay Lessor an amount equal to one-eighth (1/8) of the revenue realized by Lessee for all gas and the constituents thereof produced and marketed from the Leasehold, less the cost to transport, treat and process the gas and any losses in volumes to point of measurement that determines the revenue realized by Lessee. Lessee may withhold Royalty payment until such time as the total withheld exceeds fifty dollars ($50.00).

(C) DELAY IN MARKETING: In the event that Lessee drills a well on the Leasehold or lands pooled/unitized therewith that Lessee deems to be capable of production, but does not market producible gas, oil, or their constituents, therefrom and there is no other basis for extending this Lease, Lessee shall pay after the primary term and until such time as marketing is established (or Lessee surrenders the Lease) a Delay in Marketing payment equal in amount and frequency to the annual Delay Rental payment, and this Lease shall remain in full force and effect to the same extent as payment of Royalty.

EXHIBIT "A"

ATTACHED TO AND MADE PART OF THAT CERTAIN ASSIGNMENT OF OVERRIDING ROYALTY INTEREST DATED THE 10TH DAY OF MARCH, 2010, BY AND BETWEEN XTO ENERGY INC., AS ASSIGNOR AND WHITMAR EXPLORATION COMPANY, AS ASSIGNEE

XTO No. 1518-0135-00
Lessor: Phyllis A Deacher
Lessee: XTO ENERGY INC.
Lands: 12.95 acres, more or less, identified for tax purposes as 185.04-1-7.1, Town of Sanford, 200 Farnham Rd.
Recorded: Book 02278, Page 0397, Recorder's Office of Broome County

XTO No. 1518-0064-00
Lessor: Salvatore DeAugustino
Lessee: XTO ENERGY INC.
Lands: 34.01 acres, more or less, identified for tax purposes as 169.00-2-8, Town of Sanford, 1190 Pazzelli Rd.
Recorded: Book 02236, Page 0473, Recorder's Office of Broome County

XTO No. 1518-0032-00
Lessor: Salvatore DeAugustino & John DeAugustino
Lessee: XTO ENERGY INC.
Lands: 35.05 acres, more or less, identified for tax purposes as 169.00-2-9, Town of Sanford, 829 William Law Rd.
Recorded: Book 02240, Page 0266, Recorder's Office of Broome County

XTO No. 1518-0063-00
Lessor: John DeAugustino & Mary Ann DeAugustino
Lessee: XTO ENERGY INC.
Lands: 21.90 acres, more or less, identified for tax purposes as 169.00-2-12, Town of Sanford, 462 Farnham Rd.
Recorded: Book 02275, Page 0316, Recorder's Office of Broome County

XTO No. 1518-0033-00
Lessor: Loreto DeClaudis & Rosina DeClaudis
Lessee: XTO ENERGY INC.
Lands: 32.66 acres, more or less, identified for tax purposes as 185.04-1-17, Town of Sanford, 130 Farnham Rd.
Recorded: Book 02236, Page 0503, Recorder's Office of Broome County

XTO No. 1518-0065-00
Lessor: Dewey A Decker & Dawn M Decker
Lessee: XTO ENERGY INC.
Lands: 71.30 acres, more or less, identified for tax purposes as 170.01-1-14.1 and 201.02-1-1.112, Town of Sanford, 50 N. Sanford Rd., 131 NYS Rte 41.
Recorded: Book 02236, Page 0461, Recorder's Office of Broome County

XTO No. 1518-0047-00
Lessor: Friend L. Decker & Irene Louise Decker
Lessee: XTO ENERGY INC.
Lands: 72.16 acres, more or less, identified for tax purposes as 218.11-1-3.1, Town of Sanford, 346 Oquaga Lake Rd.
Recorded: Book 02232, Page 0222, Recorder's Office of Broome County

XTO No. 1518-0066-00
Lessor: Michael F Decker & Beth, aka Beth Anne Decker
Lessee: XTO ENERGY INC.
Lands: 15.656 acres, more or less, identified for tax purposes as 218.00-1-3, Town of Sanford, 280 Oquaga Lake Rd.
Recorded: Book 02232, Page 0361, Recorder's Office of Broome County

EXHIBIT "A"
ATTACHED TO AND MADE A PART OF THAT CERTAIN
ASSIGNMENT OF OVERRIDING ROYALTY INTEREST, DATED THE 15TH DAY OF JULY 2011,
BY AND BETWEEN WHITNEY R. MARVIN REVOCABLE TRUST, AS ASSIGNOR, AND
NORTH ROYALTIES AGENT FUND VI LP AND CEDAR ROYALTIES LLC, COLLECTIVELY, AS ASSIGNEE

DEPOSIT PROSPECT - BROOME COUNTY

The following Leases and the same Leases described in an assignment from XTO Energy Inc. to WildMar Exploration Company, dated March 17, 2010, and recorded on October 7, 2010, Book 02328, Page 0351 in the records of Broome County, NY. The following Leases are the same Leases described in an assignment from WildMar Exploration Company to Whitney R. Marvin Revocable Trust, dated May 24, 2010, and recorded on May 17, 2011, Book 02345, Page 0371 in the records of Broome County, NY.

LEASE NO.	LESSEE	LESSOR	TAX MAP NO.	PROPERTY ADDRESS	TOWNSHIP DISTRICT VILLAGE	COUNTY	DATE	END DATE	OPTION TO RENEW	EXCERPTED MEMORANDUM BOOK/PAGE	GR. AC.	NET AC.	XTO-WSC ASSIGNMENT RECORDING DATE	XTO-WTC RECORDED ASSIGNMENT BOOK/PAGE	WSC-WMRT ASSIGNMENT RECORDING DATE	WSC-WMRT RECORDED ASSIGNMENT BOOK/PAGE
NY0002655 & 1520-0355-00	XTO Energy Inc.	Clifford A. and Ruth A. Decker	207.01-1-21	2500 Old Rte 17	Sanford	Broome	7/31/2008	7/31/2013	5 yrs	02320/0471	2.0000	2.0000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002664 & 1520-0356-00	XTO Energy Inc.	Richard J. DeFilippo and Sarah E. DeFilippo	122.00-1-24	559 Lumber Rd.	Sanford	Broome	8/10/2008	8/10/2013	5 yrs	02324/0063	60.0000	60.0000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002665 1520-0357-00	XTO Energy Inc.	Gary R. Gardner and Linda L. DeGraw	206.00-1-22	162 Dutch Rd.	Sanford	Broome	8/18/2008	8/18/2013	5 yrs	02324/0054	20.0000	20.0000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002667 & 1520-0460-00	XTO Energy Inc.	James M. Denham and Alfred C. Coffman	120.00-1-6	212 Hawthorne Rd.	Sanford	Broome	8/1/2008	8/1/2013	5 yrs	02324/0268	2.5000	2.5000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002669 & 1520-0427-00	XTO Energy Inc.	Cynthia S. Devine	155.00-2-9 155.00-2-8	196 Beebe Hill Rd. 196 Beebe Hill Rd.	Sanford	Broome	7/15/2008	9/15/2013	5 yrs	02321/0255	30.2000	23.3050	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002670 & 1520-0225-00	XTO Energy Inc.	DONT Properties, LLC	207.01-1-15 207.00-1-15	105 Lamel Lake Rd. 107 Lamel Lake Rd.	Sanford	Broome	7/6/2008	7/6/2013	5 yrs	02321/0231 02320/0265	153.2400	153.2400	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002672 & 1520-0359-00	XTO Energy Inc.	James DiCenzo	124.00-1-57	347 Rose Rd.	Colesville	Broome	7/31/2008	7/31/2013	5 yrs	02320/0265	2.0000	2.0000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002673 & 1520-0215-00	XTO Energy Inc.	Ronald Dickson	129.01-1-24	W. Davis Hill Rd.	Sanford	Broome	7/31/2008	7/31/2013	5 yrs	02320/0267	22.000	22.000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002674 & 1520-0216-00	XTO Energy Inc.	Donna V. Dickson and Sylvia D. Dickson	202.01-2-31	1082 NYS Rte. 17	Windsor	Broome	8/1/2008	8/1/2013	5 yrs	02320/0255	3.1900	3.1900	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002393 & 1520-0571-00	XTO Energy Inc.	Jane Decker	202.01-1-27	6 Tabor Hill Rd.	Sanford	Broome	9/4/2008	9/4/2013	5 yrs	02324/0244	1.2000	1.2000	10/7/2010	02320/0351	5/17/2011	02345/0371
NY0002398 & 1520-0225-00	XTO Energy Inc.	Phyllis A. Decker	153.04-1-7.1	209 Decker Rd.	Sanford	Broome	8/29/2008	8/29/2013	5 yrs	02320/0267	12.9500	12.9500	10/7/2010	02320/0351	5/17/2011	02345/0371
										TOTAL ACRES:	332.4100	321.9400				

BROOME COUNTY CLERK
RECORDING PAGE

[redacted]

Return To:

DENDEC FARMS INC
123 NY RT 41
WINDSOR, NY 13865

Index	:	BOOK OF DEEDS
Book	:	02365 Page : 0481
Pages	:	0002
Instrument	:	Deed Misc
Date	:	1/18/2012
Time	:	2:56:44
Control#	:	201200002730

CENTRAL APPALACHIAN PETROLEUM

Employee ID: JMA35719

RC2 - RECORDING	$	31.50
RCMx Basic Recording	$	19.00
Total	$	50.50

MORTGAGE TAX

Mortgage Amount	$	.00
Basic	$	.00
Special	$	.00
Additional	$	.00
Total	$	.00

STATE OF NEW YORK
BROOME COUNTY CLERK

WARNING-THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 316-A(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH.

TRANSFER TAX

Taxable Amt	$	.00
Transfer Tax	$	.00

RICHARD R BLYTHE

Comp
Ver.
Bk.

02012000002730

KNOW ALL MEN BY THESE PRESENTS, That Central Appalachian Petroleum, of 7095 East Market Street Suite-B, Warren, Ohio 44484 for and in consideration of the sum of One Dollar ($1.00) unto it in hand paid, the receipt and payment of all which is hereby acknowledged, has quitclaimed, cancelled, released and surrender, and by these presents does quitclaim, cancel, release and surrender to lessors, their heirs or assigns all the Oil and Gas Leases referenced below and recorded in the records of Broome County, town of Sanford, State of New York, to-wit:

Lessor	Tax Map No:	Date Leased	Acres	Recorded Book Page
DEWDEC Farms Inc. 123 NY Rt 41 Windsor, New York 13865	201.02-1-1.1 202.04-1-9 170.01-18 185.00-1-27 217.01-1-21 201.02-1-10	2/26/2003	1,219.02	02030 0001

WITNESS my hand and seat this 18th day of April, 2006

IN PRESENCE OF

Central Appalachian Petroleum

By _____
J.B. Kapp, Partner

Individual Acknowledgement

STATE OF OHIO)
) SS:
COUNTY OF TRUMBULL)

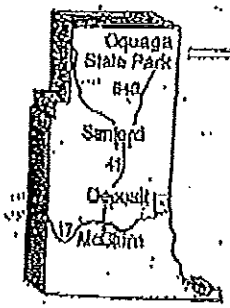
On this 18th day of April, two thousand and six, before me came J.B. Kapp, to me known to be the individual described in, and who executed, the forgoing instrument, and acknowledged that he executed the same.

_____
Notary Public - State of Ohio

Qualified in Trumbull County
My commission expires Aug 21 2008.

Central Appalachian Petroleum
7095 East Market Street, Suite-B

CHRISTINE REINER, NOTARY PUBLIC
STATE OF OHIO
MY COMMISSION EXPIRES ....



TOWN OF SANFORD

BROOME COUNTY 91 SECOND STREET DEPOSIT, N.Y. 13754
PHONE: (607) 467-3214 • FAX: (607) 467-5414

EST. 1821
55,337 ACRES

Supervisor
DEWEY A. DECKER
(607) 467-2935

Councilmen
DAVID O. MARTIN
KEVIN J. MILLER
R. GORDON TYLER
DAVID K. SEXTON

Town Clerk/Tax Collector
ALISON LANG
(607) 467-3214

Town Justices
DEBORAH PROPITT-DITEWIG
GARY L. HOLDREGE
(607) 467-2516

Highway Superintendent
ROBERT J. MACUMBER
(607) 467-2923

Assessor
BECKY OTTENS
(607) 467-5093

TELEFAX TRANSMISSION SHEET

TO: Herb Kline, ESQ FAX#:
FROM: A. Lang
DATE: 5/7/12
SUBJECT:
NUMBER OF PAGES INCLUDING TELEFAX SHEET: 3

PLEASE CALL (607) 467-3214 IF TOTAL PACKAGE IS NOT RECEIVED.

TOWN OF SANFORD FAX#: (607) 467-5414

NOTES:

Dewey would like to pass this Resolution or a similar one tomorrow night. Copies of all Resolutions from Municipalities will be gathered and sent to the attention to the Governor by NOTV. Should we use this one or change it?

Thanks
Alison

"An Equal Opportunity Employer"

Coughlin & Gerhart LLP
ATTORNEYS AND COUNSELORS

BINGHAMTON
BAINBRIDGE
ENDICOTT
ITHACA
OWEGO
HANCOCK
MONTROSE

www.cglawoffices.com
Temporary Physical Address:
1701 North Street
Endwell, New York 13760

Mailing Address:
PO Box 2039
Binghamton, NY 13902-2039
(607) 723-9511
(877) COUGHLIN
Fax (607) 723-1530
e-mail: HKline@cglawoffices.com

October 26, 2012

State of New York
Office of the Attorney General
Attn: Judith C. Malkin,
Assistant Attorney General
615 Erie Blvd, West, Suite 104
Syracuse, NY 13204

RECEIVED
ATTORNEY GENERAL'S OFFICE
OCT 29 2012
ENVIRONMENTAL PROTECTION BUREAU
SYRACUSE REGION

Dear Ms. Malkin:

In response to your letter of October 18, 2012, I would like you to know that incident to my retainer as Attorney for the Town, I do not attend Town Board meetings. However, in order to respond to your letter, I have reviewed the minutes of Town Board meetings and find the following references to hydraulic fracturing.

The first matter involving gas extraction that came before the Sanford Town Board involved a license agreement with XTO Energy on November 10, 2009 allowing that company to use Farnham Road for the removal of water from Oquaga Creek. The minutes of that Town Board meeting, a copy of which is enclosed, indicate that Supervisor Decker did participate in voting on that matter. While this was prior to adoption by the Sanford Town Board of its new Code of Ethics on January 10, 2012, upon reviewing the minutes of that meeting, I recommended to Supervisor Decker that because his corporation, DewDee Farms, had entered into a gas lease with XTO Energy Company, that he should in the future refrain from any discussion or voting on any matters relating to hydraulic fracturing.

The Town Board at its August 9, 2011 meeting adopted a resolution in support of the application of Bluestone Gas Corporation of New York, Inc. to the New York Public Service Commission to construct a 9.5 mile natural gas gathering line to be constructed in the Town from the Pennsylvania border to a connection with the Millennium Pipeline. The attached minutes of that meeting indicate that Supervisor Decker "sat in the audience during discussion" and did not vote on that resolution.

The next matter involving gas extraction came before the Town Board on October 11, 2011 when that Board authorized the Supervisor to execute a road use and crossing agreement with Bluestone Gas Corporation to grant that company a permit pursuant to the Highway Excavation Local Law and the Road Use Local Law of the Town to traverse town roads with heavy equipment. The minutes of that meeting which are attached indicate that while Supervisor Decker was in attendance at that meeting, he "sat in the audience during discussion" and did not vote relating to said agreement.

The subsequent matter involving gas extraction involved the adoption by the Town Board on May 8, 2012 of a resolution refraining from taking any position regarding hydraulic fracturing until such time that DEC completed it's SGEIS review. Again, the minutes indicate that Supervisor Decker "sat in the audience during discussion" and recused himself from participating in any voting on that matter.

Thereafter on June 12, 2012 the Town Board granted a request from Bluestone Gas Corporation of New York, Inc. relating to granting a waiver as to certain requirements of the Driveway Design Standards Local Law as to the gas transmission line that company is to construct to transmit natural gas from Pennsylvania to the Millennium Pipeline connection in Sanford. The minutes of that meeting show that Supervisor Decker was absent and did not attend that meeting.

Additionally, the Town Board, after having devoted over 2 hours of the public participation portion of its July 2012 meeting to speakers discussing hydraulic fracturing, determined at its August 14, 2012 meeting to limit discussion of hydraulic fracturing during the public participation portion of that meeting to one hour, with those in favor allowed thirty minutes and those against allowed thirty minutes. The minutes of that meeting containing the authority for doing so are attached hereto.

Thereafter, at its September 11, 2012 meeting, the Town Board found it necessary to adopt the resolution contained in the attached minutes of that meeting limiting further public discussion relating to hydraulic fracturing as so much time was taken in the public participation portion of monthly meetings in a repetitive manner that the Board was unable to attend to other business at hand.

I trust that this satisfactorily responds to your inquiry.

Yours truly,

Herbert A. Kline
Of Counsel

HAK:srb
Encls.

EXHIBIT "A"

ATTACHED TO AND MADE PART OF THAT CERTAIN ASSIGNMENT OF OVERRIDING ROYALTY INTEREST DATED THE 10TH DAY OF MARCH, 2010, BY AND BETWEEN XTO ENERGY INC., AS ASSIGNOR AND WHITMAR EXPLORATION COMPANY, AS ASSIGNEE

XTO No.	1518-0569-00
Lessor:	Betty Ann Rick
Lessee:	XTO ENERGY INC.
Lands:	4.00 acres, more or less, identified for tax purposes as 237.04-1-6, Town of Sanford, 10 Faulkner Rd.
Recorded:	Book 02276, Page 0097, Recorder's Office of Broome County

XTO No.	1518-0644-00
Lessor:	Milo E. & Michele A. Riverso
Lessee:	XTO ENERGY INC.
Lands:	1.78 acres, more or less, identified for tax purposes as 155.00-2-26, Town of Sanford, 177 Beebe Hill Rd.
Recorded:	Book 02278, Page 0445, Recorder's Office of Broome County

XTO No.	1518-0523-00
Lessor:	Randy G Robertson
Lessee:	XTO ENERGY INC.
Lands:	3.75 acres, more or less, identified for tax purposes as 121.04-1-5, Town of Sanford, 883 N. Sanford Rd.
Recorded:	Book 02240, Page 0257, Recorder's Office of Broome County

XTO No.	1518-0192-00
Lessor:	Richard W. Robertson, Randy G. Robertson & Bonnie R. Franks
Lessee:	XTO ENERGY INC.
Lands:	18.90 acres, more or less, identified for tax purposes as 203.01-1-2, Town of Sanford, 3537 Old Rte 17.
Recorded:	Book 02275, Page 0298, Recorder's Office of Broome County

XTO No.	1518-0276-00
Lessor:	Carmine & Vincenza Romano
Lessee:	XTO ENERGY INC.
Lands:	50.00 acres, more or less, identified for tax purposes as 154.04-1-4, Town of Sanford, 320 Loomis Hill Rd.
Recorded:	Book 02238, Page 0379, Recorder's Office of Broome County

XTO No.	1518-0096-00
Lessor:	Paul Ropitzky, & John Ropiekl, & Michael Ropiekl
Lessee:	XTO ENERGY INC.
Lands:	76.40 acres, more or less, identified for tax purposes as 170.01-1-6, Town of Sanford, 775 NYS Rte 41.
Recorded:	Book 02236, Page 0476, Recorder's Office of Broome County

XTO No.	1518-0687-00
Lessor:	Ira Sheldon Rosenberg, LLC
Lessee:	XTO ENERGY INC.
Lands:	76.50 acres, more or less, identified for tax purposes as 088.00-1-13, Town of Sanford, 45 E. Afton Rd.
Recorded:	Book 02276, Page 0085, Recorder's Office of Broome County

XTO No.	1518-0527-00
Lessor:	Anthony L. & Anthony R. Ruggiero
Lessee:	XTO ENERGY INC.
Lands:	40.61 acres, more or less, identified for tax purposes as 235.01-1-4, Town of Sanford, 568 Laurel Lake Rd.
Recorded:	Book 02238, Page 0490, Recorder's Office of Broome County

XTO No.	1518-0014-00

Lessor: John C Russell & Melissa Russell
Lessee: XTO ENERGY INC.
Lands: 9.371 acres, more or less, identified for tax purposes as 201.02-1-1.2, Town of Sanford, 94 Schoolhouse Rd.
Recorded: Book 02236, Page 0464, Recorder's Office of Broome County

XTO No. 1518-0564-00
Lessor: Michael D Russell
Lessee: XTO ENERGY INC.
Lands: 2.00 acres, more or less, identified for tax purposes as 218.00-1-2.2, Town of Sanford, 242 Oquaga Lake Rd.
Recorded: Book 02250, Page 0464, Recorder's Office of Broome County

XTO No. 1518-0651-00
Lessor: Lawrence G Russell & Lynda D Russell
Lessee: XTO ENERGY INC.
Lands: 3.58 acres, more or less, identified for tax purposes as 218.00-1-19, 218.00-1-20 & 218.00-1-21, Town of Sanford, 307 Oquaga Lake Rd., 297 Oquaga Lake Rd., 291 Oquaga Lake Rd.
Recorded: Book 02240, Page 0662, Recorder's Office of Broome County and Correction to Oil and Gas Lease, Book 02275, Page 0543, Recorder's Office of Broome County

XTO No. 1518-0547-00
Lessor: Victor A. & Deborah A. Russo
Lessee: XTO ENERGY INC.
Lands: 5.582 acres, more or less, identified for tax purposes as 187.03-1-18, Town of Sanford, 108 Shaver Hill Rd.
Recorded: Book 02238, Page 0313, Recorder's Office of Broome County

XTO No. 1518-0307-00
Lessor: Joseph Russo & Anthony Russo
Lessee: XTO ENERGY INC.
Lands: 23.70 acres, more or less, identified for tax purposes as 153.00-1-39, Town of Sanford, 456 Marsh Pond Rd. Abnd.
Recorded: Book 02238, Page 0370, Recorder's Office of Broome County

XTO No. 1518-0308-00
Lessor: Carl & Loretta Salvador
Lessee: XTO ENERGY INC.
Lands: 6.32 acres, more or less, identified for tax purposes as 237.04-1-9, Town of Sanford, 32 Faulkner Rd.
Recorded: Book 02238, Page 0244, Recorder's Office of Broome County

XTO No. 1518-0178-00
Lessor: Town of Sanford
Lessee: XTO ENERGY INC.
Lands: 15.10 acres, more or less, identified for tax purposes as 186.03-1-1.2, 202.01-1-37 and 202.03-1-18, 251 NYS Rte 41, 2990 Old Rte 17, 66 Oquaga Lake Rd., Town of Sanford
Recorded: Book 02236, Page 0509, Recorder's Office of Broome County

~~XTO No.~~ 1518-0558-00
Lessor: ~~Marie L. Saxby~~
Lessee: XTO ENERGY INC.
Lands: ~~Ratification of the Memorandum of Lease~~ as recorded in Book 02232, Page 0207, Recorder's Office of Broome County
Recorded: Book 02278, Page 0379, Recorder's Office of Broome County

XTO No. 1518-0107-00
Lessor: Daniel A Schaefer
Lessee: XTO ENERGY INC.
Lands: 14.83 acres, more or less, identified for tax purposes as 202.03-1-5.112, Town of Sanford, 151 Oquaga Lake Rd.
Recorded: Book 02232, Page 0328, Recorder's Office of Broome County

XTO No.	1518-0103-00
Lessor:	Schaefer Timber & Stone, LLC
Lessee:	XTO ENERGY INC.
Lands:	156.77 acres, more or less, identified for tax purposes as 202.03-1-5.111, Town of Sanford, 171 Oquaga Lake Rd.
Recorded:	Book 02236, Page 0514, Recorder's Office of Broome County

XTO No.	1518-0282-00
Lessor:	Anthony & Barbara Schindler
Lessee:	XTO ENERGY INC.
Lands:	10.00 acres, more or less, identified for tax purposes as 170.01-1-10, Town of Sanford, 675 NYS Rte 41.
Recorded:	Book 02238, Page 0262, Recorder's Office of Broome County

XTO No.	1518-0586-00
Lessor:	William A & Dorothy V Schleicher
Lessee:	XTO ENERGY INC.
Lands:	100.00 acres, more or less, identified for tax purposes as 139.00-1-6, Town of Sanford, 187 Wheeler School Rd.
Recorded:	Book 02244, Page 0681, Recorder's Office of Broome County

XTO No.	1518-0108-00
Lessor:	William Schwalm
Lessee:	XTO ENERGY INC.
Lands:	44.71 acres, more or less, identified for tax purposes as 236.00-1-14, Town of Sanford, 186 Smith Rd.
Recorded:	Book 02240, Page 0263, Recorder's Office of Broome County

XTO No.	1518-0179-00
Lessor:	David K Sexton & Anita M Sexton
Lessee:	XTO ENERGY INC.
Lands:	3.68 acres, more or less, identified for tax purposes as 201.00-1-15, Town of Sanford, 9 Tennent Rd.
Recorded:	Book 02247, Page 0182, Recorder's Office of Broome County

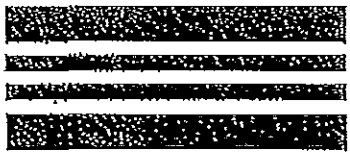
XTO No.	1518-0623-00
Lessor:	Paul R. & Tianla L. Shaffer
Lessee:	XTO ENERGY INC.
Lands:	13.95 acres, more or less, identified for tax purposes as 171.00-1-30 and 171.00-1-31, Town of Sanford, 96 Loomis Hill Rd., 116 Loomis Hill Rd.
Recorded:	Book 02244, Page 0328, Recorder's Office of Broome County and Correction to Oil and Gas Lease, Book 02275, Page 0370, Recorder's Office of Broome County

XTO No.	1518-0082-00
Lessor:	Shaver Hill Heights LLC
Lessee:	XTO ENERGY INC.
Lands:	460.60 acres, more or less, identified for tax purposes as 170.00-1-4, 171.00-1-7,170.00-1-9.21 and 170.00-1-9.11, Town of Sanford, 213 Reservoir Rd., 211 Reservoir Rd., 592 Shaver Hill Rd., 590 Shaver Hill Rd.
Recorded:	Book 02230, Page 0336, Recorder's Office of Broome County

XTO No.	1518-0040-00
Lessor:	Kenneth B Shields
Lessee:	XTO ENERGY INC.
Lands:	19.81 acres, more or less, identified for tax purposes as 138.00-1-24, Town of Sanford, 701 N. Sanford Rd.
Recorded:	Book 02241, Page 0406, Recorder's Office of Broome County

END OF EXHIBIT

BROOME COUNTY CLERK
RECORDING PAGE



Return To:

G WILLIAM GUNNER
175 N MAIN ST
WELSVILLE, NY 14895

Index : BOOK OF DEEDS

Book : 02227 Page: 0428

Pages : 0003

Instrument : Lease

Date : 5/20/2008

Time. : 10:22:07

Control# : 200800010801

WILLIAMS RANDY J

Fil#2 : TT 2008 005075

Employee ID: GMG30953

RC2 - RECORDING	$	22.00
RCMx Basic Recording	$	19.00
STTX - TRANSFER TAX	$	0.00
CTTX - TRANSFER TAX	$	0.00
Total	$	41.00

MORTGAGE TAX

Mortgage Amount	$	.00
Basic	$	.00
Special	$	.00
Additional	$	.00
Total	$	.00

STATE OF NEW YORK
BROOME COUNTY CLERK

WARNING-THIS SHEET CONSTITUTES THE CLERKS ENDORSEMENT, REQUIRED BY SECTION 316-A(5) & SECTION 319 OF THE REAL PROPERTY LAW OF THE STATE OF NEW YORK. DO NOT DETACH.

TRANSFER TAX

Taxable Amt	$	1.00
Transfer Tax	$	.00

RICHARD R BLYTHE

Comp _____ _____
Ver. _____ _____
Bk. _____ _____

5.54

MEMORANDUM OF LEASE

This Lease made this 7 day of Feb, 2008, by and between:

Randy J. Williams, a single man
136 Baker Road
Windsor, NY 13865

as Lessor, (whether one or more), and SCHUEPBACH ENERGY APPALACHIA, LLC., 2601 NORTH HARWOOD STREET, DALLAS, TX. 75201, as Lessee.

WHEREAS:

The Lessor and the Lessee have entered into an Oil and Gas Lease dated Feb. 7, 2008, and made effective Feb. 7, 2008 for a primary term of Five (5) years, on those premises described as all those certain tracts of land situate in the Town of Windsor, in the County of Broome, in the State of New York, and bounded as follows

Tax ID #	160.03-2-9
On the North by:	160.03-2-2
On the East by:	160.03-2-7.212
On the South by:	Baker Road
On the West by:	160.03-2-15

Deed or other instrument by which the Lessor acquired title Deed Book 1382/ Page:076 Consisting of 30.30 acres, more or less.

NOW THEREFORE: In consideration of the mutual covenants and agreements contained in this Agreement, the Lessor and the Lessee agree as follows:

1. This Memorandum of Lease has been executed for the purpose of indicating the existence of the aforesaid Lease and shall not be considered in any way a modification or alteration of the Lease Agreement.

2. The Lease further provides that the lease continues beyond its primary term for so long thereafter as the leased substances are produced from the said lands or any portion thereof is pooled, unitized or consolidated with other lands in accordance with the lease terms.

3. IF THIS LEASE BECOMES FORFEITED, TERMINATED OR EXPIRES, THE LESSEE, OR IF THE LEASE HAS BEEN ASSIGNED, THE ASSIGNEE IS REQUIRED TO PROVIDE A DOCUMENT CANCELLING THE LEASE AS OF RECORD, AT NO COST TO THE CURRENT LANDOWNER. IF THE LESSEE OR ASSIGNEE FAILS TO CANCEL THIS LEASE, THE CURRENT LANDOWNER MAY COMPEL A CANCELLATION PURSUANT TO SECTION 15-304 OF THE GENERAL OBLIGATIONS LAW.

IN WITNESS WHEREOF, Lessor hereunto sets hand and seal.

(Seal)

(Seal)

LESSOR:
Randy J. Williams

LESSEE:
Schuepbach Energy Appalachia, LLC
Per:

TOWN OF HOWARD PLANNING BOARD
JUNE 21, 2012 at 7:00 P.M

Planning Board members present: Chairman Jack Bossard, Wesley Coots, Gary Rice, Dale Smith, Stanley Ross and Karen Palmer. Absent was James Fodge, Paul Harrington and Gary Hosmer. Also present were Building Inspector/ Land Use Officer Robert Riekofski, Town Attorney Karl V. Anderson, Jr., Supervisor Donald Evia, Elton Badeau, Richard Stewart, Andrew Dgien, Andy Matarazzo, Ken Knowles and Neil Vitale from Steuben County Landowners Coalition and Clerk Loreen Karr.

The meeting of the Planning Board was called to order by Chairman Jack Bossard at 7:03 p.m.

The minutes of the last Planning Board meeting were reviewed by the Board. A motion was made by Gary Rice and seconded by Wesley Coots to approve the minutes of the meeting as printed. Carried: Rice, aye; Coots, aye; Bossard, aye; Smith, aye; Ross, aye; Palmer, aye.

There was no update from Everpower by John Nichols.

Ken Knowles and Neil Vitale from the Steuben County Landowners Coalition presented information with regard to gas drilling and requested that the Town consider passing a Resolution supporting development of natural gas resources.

Robin Holevinski arrived at 7:04 p.m.

Mr. Knowles advised that the Steuben County Landowners Coalition is concerned with a lease that is good for the landowners and started their own corporation 4 years ago.

Pam Harmon arrived at 7:08 p.m.

Mr. Knowles shared a map with the Planning Board showing the areas of Steuben County where Resolutions have been passed, the townships where no action has been taken and the Town of Wayne, who has chosen to impose a moratorium on gas drilling. The Town Board had received a letter from SCIDA with their support of this Resolution. Informational DVDs were distributed to the Planning Board entitled Truth Land.

The Town of Dryden has placed a ban on gas drilling for their township. The Steuben County Landowners Coalition feels that if a town puts a ban or moratorium on their township that no gas drilling will be in that area if it is opened up to NYS. Discussion followed with regard to operations.

Pam Harmon informed the Planning Board that the Town of Avoca passed this Resolution in support of allowing gas development last night at their town board meeting.

A short form sample resolution was passed out to the Planning Board members and Town Board members present. Time frames for actually drilling to start in NYS was discussed with probably at least a year away being realistic, if DEC and NYS allows drilling permits. Discussion followed with regard to contracts and leases. Mr. Knowles advised that they are working on informational brochures and are concerned with royalties and getting the best lease agreements for landowners. The gas companies would like to see large areas with leases and are not going to sign contracts unless at least 60% of area around is willing to lease. Joint landowners are discussing extending their leases.

Mr. Knowles believes that there would be approximately 50 – 100 wells in the first year. Discussion followed. Supervisor Donald Evia asked about revenue to the Town on production with discussion as to the split being the same as taxes through the County. If it goes to SCIDA for a PILOT, it could be negotiated. The gas companies would also offer other incentives to Towns, such as new town halls and new roads.

The Planning Board thanked Mr. Knowles and Mr. Vitale for their information.

Stanley Ross and Karen Palmer shared about the training that they attended through the County on Municipal Planning and Managing potential impacts from Natural Gas Development. The Utica shale was discussed and practical steps that local governments can take to protect their roads and townships, including traffic issues, farms and farmland affects, industrial regulations. The other suggestion they received at this training was for towns to send out letters or have public meetings with regard to noise and visual impacts. This would include before, during and after impacts and results, with total start to finish time being approximately 28 days. There is a website that shows were rigs are at any time. The gas pipelines are 8" to

10" in diameter. Discussion followed regard clean up and reclamation. Transportation would be a large consumer in this gas drilling operation. Permits for well drillers were also discussed.

The Adult use local law was again discussed. Karen Palmer had gotten a copy of Bath's map with regard to where adult use areas are allowed. The Town of Bath used 1200 feet. She will try to have a map made by the next Planning Board meeting showing the areas available using 1500 feet for the Town of Howard. Discussion followed.

A motion was made by Wesley Coots and seconded by Gary Rice to adjourn the meeting. The meeting was adjourned at 8:25 p.m. The next regular meeting of the Planning Board is on July 19, 2012 at 7:00 p.m.

Loreen A. Karr, Clerk

9/6/12

ADAMS, THEISEN & MAY
ATTORNEYS AND COUNSELORS AT LAW
301 THE CLINTON HOUSE
103 WEST SENECA STREET
ITHACA, NEW YORK 14850

MICHAEL R. MAY

Phone: 607-272-3442 Fax: 607-272-4514
e-mail: mmay@atmlaw.com
Website: ATMLAW.com

ARMAND L. ADAMS
1911-1983
HENRY W. THEISEN
1939-2001

September 5, 2012

Mr. George Keturi
Town of Van Etten Supervisor
Van Etten Town Board Members:
Donna Lesh, Joseph St. Angelo,
Harold Shoemaker, and Ralph Pietila
Town of Van Etten
83 Main Street, PO Box 177
Van Etten, New York 14889

Re: Opposition to proposed gas drilling moratorium

Dear Mr. Keturi, Ms. Lesh, Mr. St. Angelo, Mr. Shoemaker and Mr. Pietila:

I represent the Chemung County Gas Coalition which includes many members who reside in or own land in the Town of Van Etten. The Chemung County Gas Coalition exists in large part to assist land owners in educating themselves about responsible natural gas development. The Chemung County Farm Bureau and the Chemung County Gas Coalition have worked together on natural gas development in Chemung County and are working together to oppose any moratorium on gas drilling.

As you know, the New York State Department of Environmental Conservation (DEC) has been developing regulations that would be applied to natural gas development in New York State. In addition to decades of work in this area for existing oil and gas wells throughout New York State, the DEC has been proceeding over the past four years in developing appropriate regulations designed specifically to address high volume hydraulic fracturing in natural gas development. It goes without saying that DEC has devoted an incredible number of man hours and resources in studying gas drilling in other states and in developing the appropriate regulations for New York State.

Although the reasons in support of responsible natural gas drilling are too numerous to discuss in this letter, and all the reasons why we oppose a moratorium in the Town of Van Etten are also too numerous to discuss in this letter, I will highlight some of the most important points below:

1. Gas Drilling That Will Be Allowed Under The DEC Regulations Will Be Environmentally Safe and Responsible.

The draft Supplemental Generic Environmental Impact Statement (dsgeis) and related regulations that have been created by DEC and which, when in final form, will regulate gas drilling, will be the toughest regulations in the entire United States. The dsgeis has the following chapters relative to this issue:

- Chapter 5 – Natural Gas Development Activities & High Volume Hydraulic Fracturing consisting of 144 pages.
- Chapter 6 – Potential Environmental Impacts consisting of 212 pages.
- Chapter 7 – Mitigation Measures consisting of 122 pages.

Chapter 7 alone includes a 78 page section (7.1) devoted to protecting water resources. One of the most significant features in that section, unlike what is allowed in Pennsylvania, are regulations that would require a closed loop system for all fluids resulting from the hydro-fracturing process (dsgeis Page 7-40 attached) (Appendix pg. A1). This means that water tight, covered tanks at the well site will contain the fracking fluid. In addition, significant portions of the fracking fluid can be re-used on other drilling sites.

Another key feature of the DEC regulations is the requirement that all gas wells be encased in three cement casings to protect aquifers. This will mandate a surface casing, an

intermediate casing, and a production casing. See dsgeis pgs. 7-52 to 7-56 attached. A2-A6.

In addition, extensive private water well sampling provisions are included in the proposed regulations. DEC permits will also require secondary containment where a drill site will have a lining so that in the unlikely event of any sort of spill the fluid involved will be contained at the site of the spill for clean up. See "High-Volume Hydraulic Fracturing - Protection of Public Health and the Environment" by Eugene J. Leff, Deputy Commissioner of DEC, attached (pages A9 and A10).

The unsubstantiated claims by many opposed to gas drilling as it relates to environmental concerns have convinced many individuals to oppose gas drilling without researching the issue themselves. One prominent expert in geology and oil and gas drilling has stated publicly that he supports natural gas development in part because he has seen too many natural gas opponents hijack the research in this field. Professor Donald J. Siegel of the Earth Sciences Department of Syracuse University is a well respected expert in this field. He has publicized the results of his research and long term experience in this field, that natural gas development is environmentally sound and that virtually all claims that high volume hydraulic fracturing contaminates wells are unfounded. Professor Siegel acknowledges that it is possible for an improperly drilled and encased well to allow methane into a water supply. However, he also points out that throughout New York State methane naturally enters water supplies. He correctly notes that the regulations by DEC include the requirement of three casings of concrete around gas drilling pipes which, when correctly done, will be effective in protecting aquifers.

In my law practice interactions with the DEC I have always observed that agency to be extremely cautious and strict in their

requirements. Simply put, the DEC has always been very thorough in the adoption and enforcement of regulations to protect the environment. A reading of the degeis and proposed regulations make it clear that the same goes for natural gas development.

2. Local Economic Benefits of Natural Gas.

Critics of natural gas development allege that allowing drilling will result in a boom and bust economy. All increases in economic activity can include later leveling off of that economic activity. Yet, it is difficult to tell an unemployed or underemployed individual, whether they be a provider for their family, a recent high school graduate, or a small business owner facing closure of their business, that an opportunity for improved economic activity should be banned or subjected to a moratorium because some day the boom may level off.

The Towanda, Pennsylvania newspaper periodically publishes a section devoted to natural gas development in Pennsylvania. A review of a small sampling of the articles in that newspaper shows the significant and sustained nature of the increased economic activity in that area. Virtually all businesses benefit whether they be building contractors, surveyors, engineers, restaurants, hotels, retail stores, welders, mechanics, truckers, physical therapists, cleaning companies, ... you name it (see sampling of articles attached) (pages A12 – A28).

In late 2010 the Director of the Bradford County, Pennsylvania Economic Development Organization spoke at a meeting sponsored by the Chemung County Chamber of Commerce and the Farm Bureau. He outlined the vastly improved business environment in Bradford County attributable to natural gas development. Some of the activities of his organization included creation of a directory of local businesses that supplied goods or services used by the gas drilling industry. Talisman Energy had put out a

notice on their website directing various subcontractors in the industry to refer to that directory for purposes of acquiring materials and services that were needed in support of natural gas development activities. That type of synergy results in a vibrant local economy.

Mansfield State University and other colleges in Pennsylvania have also developed programs to train young people so that they are better suited to land good paying jobs in the gas industry. The attached sample articles provide a glimpse of these sorts of activities (Pg. A31-A33) as well as the other benefits of improved local economic activity tied to natural gas development.

These jobs are real. See also the DEC projection of NYS jobs created (DEC Public Health and the Environment, pg. A34). The employment of individuals directly by the natural gas development companies represents perhaps the most significant socio-economic benefit. See sampling of features on hometown employees attached (Pg. A35-A37).

The ad valoreum tax that exists in New York State (the tax that results in property tax revenue for localities) will enable local governments to vastly improve their budgetary situation. An article in the New York State Bar Journal by Scott Kurkowski, a Binghamton lawyer who is an expert in gas leasing, included a table of estimated ad valoreum tax to be paid to the Town of Windsor in Broome County when gas drilling proceeds (attached P. A38). The taxes that would be paid for a well pad (even under conservative estimates) are significant to say the least. Even with lower natural gas prices as currently exist, it is clear that ad valoreum tax revenue for the Town of Van Etten is likely to be significant. Higher tax revenue from increased property transfers has also been documented in Bradford County, PA (attached article)(A39).

3. The National Picture on Energy and Environmental Benefits of Natural Gas.

Does a local community have a role to play in helping the United States as a whole? Over the past two or three years, existing methods of producing desperately needed energy have proven to be extremely risky. The environmental disaster in the Gulf of Mexico from the blow out of an offshore BP well graphically demonstrated the very real risk of oil drilling in our oceans and seas. The presence of deep waters surrounding the oil drilling facility greatly limited what could be done when the spill occurred.

The recent meltdown of a nuclear power plant in Japan graphically demonstrated the risk of widespread nuclear power generation.

The dependence of the United States on foreign oil, in many cases involving dependence on countries bent on destroying the United States or its allies, graphically demonstrates the risks of having to pay billions of dollars to such foreign countries for their oil.

Closer to home, the strip-mining of mountains in West Virginia for coal, the resulting enormous coal tar pits that destroy huge portions of our geography, and the pollution caused by burning coal, graphically demonstrate the limitations of coal as an energy source for the future.

Being from Ithaca, I have seen the one published research report from Cornell University scientists claiming that natural gas is no better than coal in reducing green house gas emissions

that contribute to global warming. Less well publicized is the research results of Professor Lawrence Cathles and his colleagues, also of Cornell University, which point out the flaws in the previously mentioned research. Professor Cathles' results have shown that natural gas is a much cleaner burning fuel than coal and is indeed less damaging to the environment and better at reducing green house gas emissions than coal (see Energy in Depth and WSKG articles attached) (Pg. A40-A46). The key is to reduce methane emissions. The gas drilling regulations of the DEC and the US Environmental Protection Agency do precisely that.

Some of the leading opponents of natural gas development do not, I suspect, publicly state the real reason why they are opposed to it. One leading opponent of gas drilling is at least honest in her reasons why she opposes natural gas. She points out that with gas development natural gas will remain an inexpensive fuel source which means there will be little economic incentive to force the development of solar and other "green" energy sources. These opponents want gas prices to become so expensive that it is worth it to switch to solar or other alternatives despite their enormous cost. To my knowledge, such opponents have not explained how individuals on fixed incomes (like the elderly) are to pay for heating their home and finding affordable electricity if the price of natural gas is pushed to extremely high levels due to the moratoria on natural gas development.

The effort to improve the efficiency and affordability of solar and other renewable energy sources is a good policy. It is clear, however, that we are decades away from having the technology to produce anywhere near the amount of energy we need from those sorts of renewable resources. Natural gas can, indeed, be a bridge fuel until solar and other alternative energies become feasible. Gas can do that by keeping energy

affordable for all Americans while protecting the environment at the same time.

The potential for natural gas to be a source of electricity generation is also becoming well recognized.

> "Now coal is being beaten at its own game. Natural gas has become a cheap and abundant domestic resource too. And it is more environmentally friendly." Attached article from the Ithaca Journal on June 13, 2012 entitled "U.S. coal use falling fast; utilities switch to gas." (Pg. A47-A48)

Natural gas is also becoming a more popular and environmentally friendly fuel for trucks and eventually for cars (see attached article, Pg. A29). Natural gas is environmentally friendly and a critically important energy source for our country. Consequently, responsible natural gas development should not be banned nor subjected to a moratorium.

4. Problems With a Moratorium.

Some argue that a moratorium is a chance for a breather and does not mean that gas drilling will be banned. New York State is already in the midst of a four year breather. I submit that virtually every person pushing for a moratorium would also push for a permanent ban as the moratorium nears expiration. A "brief" moratorium is still a ban for at least some length of time.

In many respects, a moratorium creates more problems than solutions.

- Although it is a complex issue, many individuals in the Town of Van Etten have signed oil and gas leases in the past.

Many of these gas leases have clauses stating that if a force majeure event occurs then the gas company can keep the gas lease in effect for many years to come until the force majeure event ends. Several gas companies have claimed that the New York State moratorium on high volume water fracturing/horizontal drilling is a government action beyond the control of the gas companies and therefore a force majeure event. That results in the gas leases arguably remaining in effect indefinitely, regardless of the date stated on the gas lease for expiration of the lease. This claim has been used by gas companies to hold gas leases in effect even though the New York moratorium only prohibits high volume water fracking and allows other types of gas drilling. A moratorium on <u>all</u> gas drilling would be an even stronger weapon for the gas companies to hold gas leases that are otherwise expiring to indefinite continuing time periods.

Adoption of a moratorium in the Town of Van Etten would be very strong evidence for such gas companies to hold Town of Van Etten home and landowners to these old gas leases for years to come. Why risk saddling Town of Van Etten landowners with such an uncertain title problem on their property?

- The dSGEIS and related regulations of DEC provide extensive setbacks which protect residential areas including residential areas of the Town of Van Etten. These protections make a moratorium unnecessary. Included in these provisions are rules that would prohibit drilling within 500 feet of a private water well unless the owner consented and the prohibition of drilling within 2,000 feet of any public drinking water intakes and reservoirs. See DEC Public Health and the Environment (Pg. A8). Furthermore, the DEC will consult with local governments and, where

appropriate, place limits on the number of wells or well pads to be constructed at the same time in order to minimize truck traffic, noise and visual impacts (see Page A11). Thus, the applicable DEC regulations already call for the involvement of and consultation with Town Government in the gas drilling permit process.

- A moratorium simply sends the wrong message. A moratorium says we do not want jobs, economic activity, nor new tax revenue. We do not want to work with the County to solve problems within our legal jurisdiction; we want to further delay action. We want to kill natural gas development by chipping away at its opportunities. We want to push away natural gas development and ultimately kill it through "death by a thousand cuts". Natural gas has been pushed away for four years and now we want to push it away some more. Such an approach is wrong.

- A moratorium also pushes away the natural gas drilling and other natural gas supporting companies that benefit a community. Of course those companies are in business to make money and of course landowners should be business-like in their dealings with these and all companies for that matter. However, a willingness to work with these companies and their employees, rather than a negative "keep out" message, opens up possibilities for mutual benefit. These companies will financially support good causes and their employees will volunteer in the community. See articles attached (Pg. A49-A52).

- A moratorium will do virtually nothing to help roads in the Town of Van Etten. The Town of Van Etten does not have the authority to prohibit truck or other types of traffic on the public roads as part of a gas drilling moratorium. A moratorium prohibiting drilling in the town will have little

or no effect on traffic given the regional nature of natural gas development. Working with the County and DEC is wise public policy. As stated in the Environmental Conservation Law, Section 23-0303, state law does not supersede local government jurisdiction over local roads (see next bullet point). A road use agreement may be valid but a moratorium is not.

- A moratorium could lead to expensive, prolonged litigation. The Environmental Conservation Law (ECL), Section 23-0303 provides that State law shall control natural gas development and that:

> "The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industry; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law." Emphasis added (see attached Pg. A53).

Some townships that have enacted bans on gas drilling have done so under the dubious claim that banning the gas industry does not amount to a regulation of the gas industry. The towns make this claim because they recognize the aforementioned law prohibits them from regulating the industry. Two lower courts in the State of New York have upheld that claim based on prior Court of Appeals decisions on mining but several courts in other states have not.

In Voss v. Lundvall Brothers, Inc., 800P.2d1061 (Colorado, 1992) the court held that a city could regulate various aspects of oil and gas operations within its boundaries (based on Colorado law) but could not totally ban

the drilling. In Northeast Natural Energy, LLC v. City of Morgantown, West Virginia, Civ. No. 11-C-411 (Circuit Court Monongahalia County, August 12, 2011) the court held that a city ban on oil and gas development and production is pre-empted by the West Virginia Oil and Gas Act.

In Pennsylvania a Court ruled that a municipality could restrict oil and gas wells in residential districts and that such local laws were not pre-empted by Pennsylvania Oil and Gas Law. Huntley and Huntley, Inc. v. Borough Council at Oakmont, 964 A.2d 855 (Pennsylvania, 2009). However, the State of Pennsylvania then amended their law to specifically pre-empt municipalities from banning oil and gas development. See 13 PA H.B. 1950 adopted February 14, 2012.

Obviously, the legal standing of a town to ban gas drilling is unclear. The two lower New York State court cases that allowed a ban are on appeal to the Appellate Division and no doubt any decision by the Appellate Division will result in an appeal to the New York State Court of Appeals. Should the Town of Van Etten expose itself to litigation under these circumstances? The Town should avoid such litigation. This is especially so considering the fact that the DEC has over four years of study and public input behind the regulations that will be enacted in New York State; not to mention decades of experience regulating lower volume hydro fracking throughout New York State.

Conclusion.

A moratorium is, if nothing else, a ban for a set period of time. The DEC has thoroughly studied gas drilling and has prepared a comprehensive set of regulations that will protect the environment and the safety of residents wherever natural gas

development occurs in New York State. These regulations will be the toughest in the country.

At a time when good paying jobs and vibrant economic activity is desperately needed, responsible natural gas development will significantly help the local economy. Responsible natural gas development also helps our nation. Working with Chemung County to help assure road protection is an appropriate goal of the Town of Van Etten. Adopting a moratorium will not help roads in the Town of Van Etten, will tie up many land owners to gas leases that otherwise would expire (because of the gas companies' claim that the moratorium is a force majeure event), and will expose the Town of Van Etten to litigation by gas companies and/or land owners seeking to develop natural gas in compliance with the extensive rules and regulations that will be enacted by DEC.

At this late hour, do not impose a moratorium on natural gas development.

Thank you for your consideration of this issue and your past and future work on behalf of the Town of Van Etten.

Respectfully submitted,

MICHAEL R. MAY

Herbert A. Kline

From: A. Lang, Town of Sanford [sanfordclerk@echoes.net]
Sent: Friday, November 02, 2012 1:48 PM
To: Herbert A. Kline
Subject: Fw: Important letter

----- Original Message -----
From: Steve Herz
To: 'Gordi Kniffen' ; 'Randy Williams' ; 'Ron Harting' ; 'Toml Stewart' ; 'Town of Sanford Clerk' ; 'Town of Windsor Supervisor' ; 'Cheryl Decker' ; 'Village of Windsor' ; colesvillesupervisor@echoes.net
Sent: Monday, August 27, 2012 11:07 AM
Subject: RE: Important letter

This is more time sensitive than I originally thought. If you can support this, please let me know today.

Thank-you.

sdh

From: Steve Herz [mailto:steve@steveherz.com]
Sent: Monday, August 27, 2012 7:40 AM
To: Gordi Kniffen; Randy Williams; Ron Harting; Toml Stewart; Town of Sanford Clerk; Town of Windsor Supervisor; Cheryl Decker; Village of Windsor; colesvillesupervisor@echoes.net
Subject: Important letter

Gordi, Randy, Dewey, Ron, John, & Ed-

Please review the letter as noted below. If you are comfortable in endorsing this letter, please let me know via email & we will add your names to those who have already endorsed it. It is not necessary for you to sign it or send it to anyone. If you can support it, please let me know just as soon as possible. Time is of the utmost urgency.

Steve Herz

August xx, 2012

The Hon. Andrew M. Cuomo
Executive Chamber
Albany, N.Y. 12224

Dear Governor Cuomo:

We, the undersigned elected officials, are writing to you with an urgent appeal to make a decision with regard to natural gas drilling in the Southern Tier of the state.

As you know, we have been on the front lines in this debate for several years. We have studied the facts and data. We have talked to experts. Many of us have visited Pennsylvania to see ongoing drilling operations. All of us have had extensive interaction with our constituents.

TOWN OF HOLLAND
47 Pearl Street
Holland, New York 14080

Telephone: (716) 537-9443
Fax: (716) 537-9454

HERE'S THE FAX:

DATE: 3/18/14 TIME: 4:00 p.m.

TO: FAX: (212) 349-1366

FROM: Merida O'Dell, Town Clerk FAX #: (716) 537-9454

7 PAGES INCLUDING COVER SHEET

IN REGARDS TO: Your emailed FOIL request.
- Our policy, enacted June 13, 1984, stipulates that any request under FOIL be submitted in writing. Therefore, I have attached copies of those regulations, as well as a form to formally request the records.
Thank you.

IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION, PLEASE CONTACT THIS OFFICE AT 537-9443

Supervisor
JESSE M. ROBBINS

Town Clerk
DARLENE H. NYGREN

Highway Superintendent
MELVIN J. PETERSON

Assessor
RANDALL G. HOLCOMB, IAO

TOWN OF BUSTI

121 CHAUTAUQUA AVENUE
LAKEWOOD, NEW YORK 14750

Councilmen
KENNETH J. LAWTON
RICHARD B. THOR
TODD M. HANSON
BRETT A. MUCHECK

Telephone 716-763-8561
FAX 716-763-2053
email: clerk@townofbusti.com
web site: www.townofbusti.com

Via Email (cbreen@nypirg.org)

March 14, 2014

Cathleen Breen
Community Issues Coordinator
Watershed Protection Coordinator
New York Public Interest Research Group Fund, Inc.
9 Murray Street
New York, N.Y. 10007-2272

Dear Ms. Breen,

I write in response to your FOIL requested dated March 13, 2014, and submitted the same day via electronic mail, requesting information related to natural gas drilling and hydraulic fracturing from January 1, 2008 to present. I must reject your request in whole.

The Town of Busti does not keep computerized keyword indexes of all the document types you requested, and it is unreasonable to expect the Town to review all hard copies of every record going back six years for some mention of the topics you requested. If you are able to identify a specific document you have reason to believe discusses such topics, we would be happy to locate and provide it to you.

I have been Town Clerk only since January 1, 2014, but I have spoken to the Town's attorney who has been employed by the Town for nearly 15 years and he advised that neither natural gas drilling nor hydrofracking have been the topic of any resolutions or local laws adopted by the Town Board during that period as far as he can recall. The Town simply has not had any reason to discuss these topics since the Legislature exercised its pre-emption powers in 1981.

Sincerely,

Darlene H. Nygren
Town Clerk
Town of Busti

JAMES E. DOWNEY
PROFESSIONAL CORPORATION
ATTORNEY AND COUNSELOR AT LAW

21 FAIR STREET
NORWICH, NEW YORK 13815

TELEPHONE (607) 334-6316
(607) 336-1051
FAX (607) 334-1135

July 5, 2012

John Lawrence, Supervisor
Town of Afton
169 Main Street
Afton, NY 13730

Re: JLCNY Resolution

Dear John and Town Board Members:

Per your request I have reviewed the proposed "County Resolution to Acknowledge the State Department of Conservation's Lead in the Safe Development of Natural Gas" and the Community Environmental Defense Council's comments regarding same.

You inquire whether:

- Are there any legal troubles we, as a board, or town can incur if the town board adopts the resolution?
- Does adoption of the resolution open the door to a suit against us?
- Is there a financial burden to the town associated with the resolution if adopted?

As I understand the current status of the law as it applies to drilling and/or hydrofracking, Environmental Conservation Law §23-0303, reserves exclusively to the State, the authority to regulate the industry.

However, there are two recently issued New York State Supreme Court decisions interpreting ECL 23-0303 regarding whether local municipalities have any authority under the statute regarding activities of the industry within the municipality. In both cases, *Anschutz Exploration Corp. v. Town of Dryden* (Tompkins County) and *Cooperstown Holstein Corp. v. Town of Middlefield* (Otsego County), the Courts ruled that local municipalities have the authority to adopt or amend zoning laws that determine where natural gas drilling activity may occur within their territory or whether such activity should be permitted at all. Knowledgeable commentators have expressed the opinion that it is expected that both cases will be appealed to the Appellate Division, Third Department (the Town of Afton is within the jurisdiction of the Third

Department and its decisions are binding within the Town of Afton) and may ultimately be decided by the State's highest court, the Court of Appeals. Enclosed is a copy of the commentary published in the April 2012 edition of Association of Towns "Town Topics" publication.

The other area which it is acknowledged that local municipalities have authority is road use agreements and local law regulating local roads, although a local law may not specifically target the industry.

Other than the authority to ban in whole or in part by zoning laws drilling activity within the town and road use authority, the town has no authority under the current state of the law to otherwise regulate the industry. In connection with adopting zoning laws, it is probably legal for a local municipality to adopt a temporary moratorium on drilling activity within the town to allow the town sufficient time to obtain public comment, investigate pros and cons and draft zoning laws.

It is my opinion the town board should focus its attention solely upon the areas in which it has the legal authority to act. If the town board is of the collective opinion that it is in the public interest to exercise its authority by enacting zoning laws or road use laws, it must do so following the required legal procedure, which includes the holding of at least one public hearing. If the town board is of the collective opinion not to exercise its authority in those limited areas, then the town board should do nothing, in which event the fate of the industry is left to the State regulators, subject to whatever legal challenges are mounted against the regulations by either side of the issue.

Given the aforesaid content and recommendation, the board should understand the proposed resolution under your advisement constitutes an affirmative statement by the members of the town board voting in favor of same that they are not in favor of the town enacting a moratorium on drilling activity pending investigation by the town board whether drilling should be banned in whole or in part within the town by enactment of zoning laws. This is the significance of the first "BE IT RESOLVED" clause. The following two "BE IT RESOLVED" clauses are a statement that the town board members voting in favor of the resolution are content to leave the fate of the industry to State regulators. The preamble to the resolution is basically a political statement in favor of drilling.

Adopting the resolution is contrary to my recommendation that the board do nothing if it is of the collective opinion not to exercise its limited authority under ECL §23-0303 as delineated in the *Dryden* and *Middlefield* recent court cases. Either exercise your *Dryden* and *Middlefield* authority or do nothing. "Do nothing" means do not adopt canned resolutions submitted by either side of the issue especially without affording your constituents the prior opportunity to offer comment at public hearing.

One or more town board members as an elected official(s) may feel duty bound to show leadership and/or for the benefit of his/her constituents state his/her position on the issue(s). The same is commendable and what good government is suppose to embody. However, one can effectively communicate his/her position without voting Aye or Nay on a resolution(s) that effectively is a policy or position statement reflecting the current board membership's state of mind but having no legal weight.

I cannot, with any degree of certainty, state that adopting the resolution will result in legal troubles for the town, result in a lawsuit or impose a financial obligation on the town, but I can state with greater certainty, that declining to adopt the resolution will less likely result in legal troubles, a lawsuit, financial obligation on the town's part.

I trust this is responsive to your inquiry and will serve as some useful basis in the board's deliberative process regarding this matter.

Sincerely yours,

James B. Downey

JBD/ddf
Enc.

TOWN OF SANFORD

REGULAR MEETING MAY 8, 2012

PRESENT:	Dewey A. Decker	Supervisor
	David O. Martin	Councilman
	R. Gordon Tyler	Councilman
	David K. Sexton	Councilman
ALSO PRESENT:	Robert J. Macumber	Highway Superintendent
	Alison Laug	Town Clerk

GUESTS: Brad Hubbard, Oquaga Lake Sewer Administrator; Corky Macumber, Highway Employee; JD Seymour, Deputy Highway Superintendent; James A. Hinkle, 318 Shaver Hill Road; Richard Ray, 172 Shaver Hill Road; Rich Williams, 584 Shaver Hill Road; Bill & Mary Koharek, 257 Oquaga Lake Road.

Supervisor Dewey A. Decker called the Meeting to order at 7:00 PM with the Pledge of Allegiance led by R. Gordon Tyler at the Town Hall, 91 Second Street, Deposit, New York 13754.

Supervisor Decker gave the floor to Brad Hubbard, Oquaga Lake Sewer Administrator. He presented the Board with the Report of 4/10/12-5/8/12. The Report was reviewed. A discussion followed.

Supervisor Decker asked that the Highway Bids be opened. Town Clerk reported that the Bids were duly Advertised in the Town's Official Newspaper, the Deposit Courier on April 25, 2012 & May 2, 2012; Legal Notice Posted on the Town's sign board on April 16, 2012 for Sealed Bids; pertaining to the Sale of the Following Items to said Town: 1. Trucking & Hauling Materials to stockpile in the Town of Sanford. Town Clerk reported all Non-Collusive Certificates on Bids were signed.

HIGHWAY BIDS:
BIDS FOR TRUCKING & HAULING MATERIALS TO STOCKPILE IN THE TOWN OF SANFORD:

1. Schaefer Enterprises of Deposit, Inc. 360 State Highway 10, Deposit, NY 13754.

TRUCKING & HAULING MATERIALS TO STOCKPILE IN THE TOWN OF SANFORD AS FOLLOWS:

PRICE PER TON FROM THE FOLLOWING LOCATIONS:	
Warren's Excavating & Stone, Afton, NY	$8.00/Ton
Cobleskill Stone Products, Hancock, NY	$8.00/ Ton
Barrett Paving Materials, Binghamton, NY	$10.00/Ton
Vestal Asphalt Inc. Vestal, NY	$10.00/Ton
Broome Bituminous Products, Vestal, NY	$10.00/Ton

Town Clerk informed the Board that this was the only Bid. A discussion followed.

Motion was made by David O. Martin, seconded by Kevin J. McKee and all approved that the Bids for TRUCKING & HAULING MATERIALS TO STOCKPILE LOCATED IN THE TOWN OF SANFORD TO BE USED BY THE TOWN OF SANFORD, be Awarded to Schaefer Enterprises of Deposit, Inc. as follows:

PRICE PER TON FROM THE FOLLOWING LOCATIONS:	
Warren's Excavating & Stone, Afton, NY	$8.00/Ton
Cobleskill Stone Products, Hancock, NY	$8.00/ Ton
Barrett Paving Materials, Binghamton, NY	$10.00/Ton
Vestal Asphalt Inc. Vestal, NY	$10.00/Ton
Broome Bituminous Products, Vestal, NY	$10.00/Ton

A roll call vote was taken as follows: Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: May 8, 2012

(Continued on Page 138)

(Continued from Page 137)

BIDS FOR COURSE AGGREGATE: HELD FROM APRIL 10, 2012 MEETING: Bid received by F.S. Lopko Contracting, Inc. 3430 State Rte. 434, Appalachian, NY 13732 did not have a signed Non-Collusive Certificate therefore the Town Board rejected the Bid.

HIGHWAY BIDS:
BIDS FOR FINE AGGREGATE:

1. Warren's Excavating and Stone Products, LLC 208 Lewis Lane, Afton NY 13730
SAND for snow and ice control @$5.50/yd F.O.B or $11.50/yd. for material and delivery; Screened GRAVEL (Item #4 or 2") @ $6.20/yd. F.O.B or $12.00/yd. for materiil and delivery

2. Colvell Brothers Construction, LLC, 375 NY RT 79, Windsor, NY 13865
SAND for snow and ice control @$4.75/ yd: F.O.B with delivery charge of $7.50/yd totaling $12.25/yd., screened GRAVEL $4.75/yd. F.O.B with a delivery charge of $7.50/yd. totaling $12.25/yd., Fine Crusher Run (crusher dust) @ $7.25/yd. F.O.B with delivery charge of $7.50/yd. Totaling $14.75/yd., Crushed GRAVEL @ $7.50/yd, F.O.B with delivery charge of $7.50/yd. Totaling $15.00/yd.

3. Boland's Excavating & Topsoil, Inc. 1403 Milburn Drive Conklin, NY 13748
SAND for snow and ice control @$6.00/yd. DELIVERY ONLY or $3.90/yd. F.O.B, Screened GRAVEL (Item #4 or 2") @ $6.00/yd. DELIVERY ONLY or $3.90/yd. F.O.B

4. Schaefer Enterprises of Deposit, Inc. 315 State Highway 10 Deposit NY 13754
Screened Gravel or Sand @ $4.00/yd (at Decker Pit in McClure) F.O.B or $6.00/yd. delivered, Crusher Run @ $5.45/ton F.O.B or $9.45/ton Delivered.

Highway Superintendent Robert J. Macumber reviewed with the Town Board the Tabled Bids for Fine Aggregate from the Regular Meeting on April 10, 2012.

Motion was made by R. Gordon Tyler, seconded by David K. Sexton and all approved that the following bids for FINE AGGREGATE be awarded as follows:

1. Schaefer Enterprises of Deposit, Inc. 315 State Highway 10 Deposit NY 13754
Screened Gravel or Sand @ $4.00/yd (at Decker Pit in McClure) F.O.B or $6.00/yd. delivered

2. Colvell Brothers Construction, LLC, 375 NY RT 79, Windsor, NY 13865
Fine Crusher Run (crusher dust) @ $7.25/yd, F.O.B with delivery charge of $7.50/yd. Totaling $14.75/yd., Crushed GRAVEL @ $7.50/yd, F.O.B with delivery charge of $7.50/yd. Totaling $15.00/yd.

A roll call vote was taken as follows: Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: May 8, 2012

BIDS FOR COURSE AGGREGATE: HELD FROM APRIL 10, 2012 MEETING
Bid received by F.S. Lopko Contracting, Inc. 3430 State Rte. 434, Appalachian, NY 13732 did not have a signed Non-Collusive Certificate therefore the Town Board rejected the Bid.

HIGHWAY BIDS:
BIDS FOR COURSE AGGREGATE:

1. Cobleskill Stone Products, Inc., P.O. Box 220, Cobleskill, NY 12043
PRICE PER TON CRUSHED STONE: #1ST - $7.55/ton F.O.B $22.55/ton delivered; #1A-$9.25/ton F.O.B $24.25/ton delivered; #2 & #3 Mixed-$7.55/ton F.O.B $ 22.55/ton delivered; #3 & #4 Mixed-$7.55/ton F.O.B $22.55/ton delivered; #4 & #5 Mixed- $9.50/ton F.O.B $24.50/ton delivered

2. Barrett Paving Materials, Inc., PO Box 2368, Binghamton, NY 13902
PRICE PER TON CRUSHED STONE: #1ST -$19.39/ton F.O.B; #1A- $19.69/ton F.O.B

(Continued on Page 139).

(Continued from Page 138)

3. Schaefer Enterprises of Deposit, Inc., 315 Old Route 10, Deposit, NY 13754
Schaefer Enterprises bid the following materials from either their Roods Creek or Deposit quarries: PRICE PER TON CRUSHED STONE: #1st & #1A $12.95/ton F.O.B, $16.95/ton delivered, #2 & #3 Mixed, #3 & #4 Mixed, #4 & #5 Mixed all @ $9.95/ton F.O.B, $13.95 delivered; Gabions @ $9.95/ ton F.O.B, $13.95/ton delivered

Highway Superintendent Robert J. Macumber reviewed with the Town Board the Tabled Bids for Course Aggregate from the Regular Meeting on April 10, 2012.

Motion was made by David O. Martin, seconded by R. Gordon Tyler and all approved that the following bids for COURSE AGGREGATE be awarded as follows:

1. Cobleskill Stone Products, Inc., P.O. Box 220, Cobleskill, NY 12043
PRICE PER TON CRUSHED STONE: #1st - $7.55/ton F.O.B $22.55/ton delivered; #1A-$9.25/ton F.O.B $24.25/ton delivered

2. Schaefer Enterprises of Deposit, Inc., 315 Old Route 10, Deposit, NY 13754
Schaefer Enterprises bid the following materials from either their Roods Creek or Deposit quarries: PRICE PER TON CRUSHED STONE: #2 & #3 Mixed, #3 & #4 Mixed, #4 & #5 Mixed all @ $9.95/ton F.O.B, $13.95 delivered

A roll call vote was taken as follows: Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: May 8, 2012

The Minutes of the Regular Meeting, Dated 4/10/12 were presented to the Board. Motion was made by R. Gordon Tyler, seconded by David K. Sexton and all approved that the Minutes of 4/10/12 be accepted as presented.

Town Clerk's Report for April 2012 was reviewed. Motion was made by David O. Martin, seconded by Kevin J. McKee and all approved that the Town Clerk's Report for April 2012 be accepted as presented.

The Supervisor's Report for 3/2012 was reviewed. Motion was made by R. Gordon Tyler, seconded by David K. Sexton and all approved that the Supervisor's Report for 3/2012 be accepted as presented.

The Supervisor's Report for March was received.

Supervisor Decker gave the floor to Highway Superintendent Robert J. Macumber. Macumber reported on the bill received from the Broome County Land Fill. A discussion was held.

Highway Superintendent Robert J. Macumber asked the Board's Permission to attend with Deputy Highway Superintendent, JD Seymour Highway Schooling held June 11-13, 2012 at Ithaca College, NY, with expenses paid by the Town of Sanford.
The Motion was made by R. Gordon Tyler, seconded by David K. Sexton and all approved that the following Resolution be adopted:

#50 – R E S O L U T I O N – 2012

APPROVING HIGHWAY SCHOOLING FOR HIGHWAY SUPERINTENDENT ROBERT J. MACUMBER & DEPUTY HIGHWAY SUPERINTENDENT GERALD SEYMOUR

RESOLVED, that the Town Board of the Town of Sanford, Broome County, New York, do hereby Approve the Highway Schooling for Highway Superintendent Robert J. Macumber & Gerald Seymour June 11-13, 2012, at Ithaca College, NY, with expenses paid by the Town of Sanford.

* *

(Continued on Page 140)

(Continued from Page 139)

The foregoing Resolution was put to a Roll Call Vote as follows: Supervisor Dewey A. Decker AYE; Councilman David O. Martin AYE; Councilman R. Gordon Tyler AYE; Councilman David K. Sexton AYE; Councilman Kevin J McKoon AYE; NOES: None.

CARRIED. Dated: May 8, 2012.

Macumber asked Board permission to Advertise at the Town's Regular Town Board March 13, 2012 Meeting, to accept Bids pertaining to the Sale of the following item" SOLD AS IS" to the said Town: (1.) 2004 F-550 Dump Truck. The Bids to be accepted until 4:00 PM, Tuesday June 12, 2012 in the Sanford Town Hall Clerk's Office, The Bids will be opened, Tuesday, June 12, 2012, 7:30 PM at the Town Board Regular Meeting, in the Sanford Town Hall, 91 Second Street, Deposit, NY, 13754. Prospective Bidders may see the truck by appointment with Superintendent of Highways. The Town Board reserves the right to reject any and all Bids.

Macumber spoke regarding problems with the Election Board of Districts. Macumber will notify Town Board when a meeting date has been set to discuss issues with the change in Voting Districts. A discussion was held.

Supervisor gave the floor to Town Clerk, Alison Lang. She reported receiving a letter from the Delaware Valley Humane Society regarding the resignation of Dog Control Officer, Stewart Faulkner. The Delaware Valley Humane Society felt Mr. Faulkner took care above and beyond of all tasks of a DCO.

Town Clerk would like the Town Board to consider a Resolution approving a $250. Contribution from Celebrations for the Deposit Lumberjack Festival Celebration on July 19 thru 22, 2012. This stated monies ($250.) to be used only for Electrical Maintenance at the Deposit Lumberjack Festival.

The Motion was made by David O. Martin, seconded by David K. Sexton and all approved that the following Resolution be adopted:

#51 – RESOLUTIONS - 2012.

APPROVING $250. CONTRIBUTION FOR ELECTRICAL MAINTENANCE FOR THE DEPOSIT LUMBERJACK FESTIVAL CELEBRATION JULY 19 thru 22, 2012.

RESOLVED, that the Town Board of the Town of Sanford, Broome County, New York, do hereby Approve the Contribution of $250.00 from Celebrations in Budget, to help with the Electrical Maintenance for the Deposit Lumberjack Festival on July 19 thru 22, 2012, to benefit the Community.

****

A roll call vote was taken as follows: Supervisor Dewey A. Decker AYE; Councilman David O. Martin AYE; Councilman R. Gordon Tyler AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKoon AYE; NOES: None
CARRIED. Dated: May 8, 2012

Town Clerk spoke regarding the sale of surplus property at 66 Oquaga Lake Road to F.E. Kamp and the Town receiving the check for the sale of the property. A discussion was held.

Code Enforcement Officer Walter Ottens, submitted Building Permit Report for April 2012.

Dog Control Officer submitted report for April/May 2012.

Town Clerk would like the Town Board to consider a Resolution excluding Supervisor Dewey A. Decker (Decker sat in audience during discussion) to Accept Draft Supplemental Generic Environmental Impact Statement to Develop Standards to Ensure Safe Development of Natural Gas Resources Based on the Expertise of the DEC
Motion was made by David O. Martin; seconded by David K. Sexton and all approved the following Resolution was Adopted:

(Continued on Page 141)

52- RESOLUTION -2012

ACCEPT DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT TO DEVELOP STANDARDS TO ENSURE THE SAFE DEVELOPMENT OF NATURAL GAS RESOURCES BASED ON THE EXPERTISE OF THE DEC

WHEREAS, the state has dedicated more than three years and more than 10,250 man-hours creating a 900-page comprehensive plan for the safe development of natural gas through its draft Supplemental Generic Environmental Impact Statement (sGEIS) under the leadership of The Department of Environmental Conservation (DEC) and Commissioner Joe Martens as well as Governor Andrew Cuomo; and

WHEREAS, promoting economic activity and creating jobs to support families is a top priority; and

WHEREAS, state officials are developing standards to ensure safe development of our natural gas resources based on the expertise of DEC employees and advisors, such as:

* Requiring DEC staff to visit every well pads before permits are issued; and
* Requiring pre-approval of wastewater treatment plans for every proposed well pad; and
* Requiring natural gas operators to provide a plan for assessing and repairing any road where before permits are issued; and
* Requiring multiple layers of cement and steel casings around each underground well, extending at least 75 feet below New York State's deepest drinking water tables; and
*Requiring operators to provide dual failsafe protections for wastewater from hydraulic fracturing, mandating it be sealed in a watertight, covered tanks enclosed in a secondary containment system; and
*Requiring disclosure of all additives used in the hydraulic fracturing process; and

WHEREAS, the role of municipal governments in New York State's natural gas development still remains under review by the DEC as a part of the ongoing sGEIS process; and

WHEREAS, local municipalities will have a designated role under the state guidelines once released; and

WHEREAS, development of our natural gas resources is currently prohibited pending the DEC's plan and final approval by Governor Cuomo; and

WHEREAS, premature local action in our municipality could negatively impact the competitive environment of all of New York
State for natural gas development, and jeopardize the potential $11.4 billion and statewide economic impact of development; and

WHEREAS, preserving a competitive environment for development in New York as compared to neighboring states will be critical to the economic future of our region; and

NOW, THEREFORE, BE IT RESOLVED, that we, the undersigned, find pursuit of a ban or moratorium to be an irresponsible and premature misallocation of town resources pending the release of the state's final sGEIS; and

BE IT FURTHER RESOLVED, that we commend the state's leadership in developing a comprehensive statewide program to address the potential resource development holds for New York; and

BE IT FURTHER RESOLVED, that we have confidence the state will develop a program that allows development of our natural gas resources to proceed in a safe, responsible, and competitive manner.

****

(Continued on Page 142)

(Continued from Page 141)

The foregoing Resolution was put to a Roll Call Vote as follows:
Councilman David O. Martin AYE; Councilman R. Gordon Tyler; AYE; Councilman David K. Sexton; AYE; Councilman Kevin J. McKee; AYE; NOES: None
CARRIED. Dated: May 8, 2012

Supervisor Decker spoke Decker spoke on the The Power of Partnership MEGA Municipal Electric & Gas Alliance. A discussion followed.

Supervisor Decker received a letter regarding a notice of impending settlement negotiations from the New York State Public Service Commission – Bluestone Gas Corporation of New York, Inc. A discussion followed.

Bills were presented to the Board.
The Motion was made by Councilman David O. Martin, seconded by David K. Sexton and all approved that the Bills be paid as presented:
The Total Amounts and Voucher Numbers submitted to Town Clerk by Supervisor's Secretary.
Date of Audit: 5/8/12 Abstract #5 – General: $11,448.08 – Voucher #258-259, 262-263, 266-267, 270-293; Highway: $27,879.84 – Voucher #294-313; Sewer O & M: $23,673.48 – Voucher #260-261, 264, 268-269, 292, 314-318, 320.

Since no further business was at hand, on a Motion made by David O. Martin, seconded by Kevin J. McKee and all approved that the Meeting be adjourned at 8:49 PM.

Alison Laug

Alison Laug, Town Clerk

TOWN OF SANFORD

REGULAR MEETING

September 11, 2012

PRESENT:	Dewey A. Decker	Supervisor
	David O. Martin	Councilman
	R. Gordon Tyler	Councilman ABSENT
	David K. Sexton	Councilman
	Kevin J. McKee	Councilman
ALSO PRESENT:	Gerald Seymour	Highway Superintendent
	Alison Lang	Town Clerk

GUESTS: Brad Hubbard, Oquaga Lake Sewer Administrator; Andy D'Agati, Highway Employee; Brian Moore, Dog Control Officer; Diana Vanderbilt, 824 William Law Road, Mary Ellen Decker, 54 Schoolhouse Road; A & D Tripido, 940 NYS Rt. 41; Mr. & Mrs. D. Hennemann, 958 NYS Rt.41; Mary & Bill Koharik, 257 Oquaga Lake Road; Donna Altschuh, 584 Shaver Hill Road; Rich Williams, 584 Shaver Hill Road; Rich Altschuh, 584 Shaver Hill Road; David Vanpelt, 13 Meadowlark Drive; Richard Ray, 172 Shaver Hill Road; Paul & Patrice Vanslyke, 318 Farnham Road; Leland Snyder, 110 Bryce Road; Carl Andriesen, 271 Nelson Frank Road; Mary Colvard, 24 Bobolink Ct.; Douglas Vitarius, 2452 Old Route 17; Karl R. Cratz, 337 Clark Road; Gail Musante, 199 Front Street; Adelin Karlus, 756 North Sanford Road; Kristopher (Martin) Wolf, 756 North Sanford Road; Len Piorkowski, Faulkner Road; Barbara Lester, 108 Nelson Frank Road; Elizabeth Davidson; Margaret Davidson; Scott Baker, Candidate for Broome County Legislature

Supervisor Dewey A. Decker called the Meeting to order at 7:00 PM with the Pledge of Allegiance at the Town Hall, 91 Second Street, Deposit, New York 13754.

Supervisor Decker gave the floor to Brad Hubbard, Oquaga Lake Sewer Administrator. He presented the Board with the Report of 8/14/12-09/11/12. The Report was reviewed & accepted.

~PUBLIC HEARING~
Local Law Amending the Land Use Management Local Law of the Town of Sanford, Broome County, NY, Article XIII (Siting of Wireless Telecommunications Facilities)

Town Clerk notified the Town Board that the Public Hearing must be postponed due to recent changes and the Town Board must refer it to the Planning Board for recommendation. On a motion made by David K Sexton, seconded by Kevin J. McKee and all approved to refer the recent changes to the Planning Board for recommendation. The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None;
CARRIED. Dated: September 11, 2012.

PUBLIC PARTICIPATION:
(READ BY TOWN CLERK ALISON LANG)
MOTION TO LIMIT FURTHER DISCUSSION REGARDING NATURAL GAS DEVELOPMENT DURING PUBLIC PARTICIPATION PORTION OF THIS AND FURTHER TOWN BOARD MEETINGS

This Town Board has already received over two and one-half hours of extensive discussion, information and materials by interested parties at prior meetings on the subject of involvement of the Town and this Town Board in particular as to future natural gas development if and when the moratorium imposed by the State of New York is lifted.

We have not only received comments at the public participation portion of our July and August meetings on the subject but have also studied petitions and other written materials which have been submitted to us. It is apparent that some residents of our town are strongly opposed to fracking on the ground that such activity might endanger the environment that is so important to each of us and urge the Town Board to go on the record as opposing fracking in its entirety. Others feel the Town Board should require drilling companies to take specific precautions during that process, which we are not permitted to do as DEC has preempted the regulation of gas development and such comments and suggestions should have been made directly to DEC during the comment period on the generic supplemental environmental impact statement.

(Continued on Page 154)

Other residents who do not share that view believe that fracking would be good for our community in producing new jobs and will stimulate local businesses and trust that DEC will provide safe regulations to allow it in our area.

We understand these differing points of view. As we stated in a previous resolution we do not find it necessary to adopt a moratorium or ban at this time as there can be no drilling until DEC completes its environmental review. At that time we will carefully study whatever regulations are adopted by the State and will take such action as we, your elected officials, believe are in the best interest of the Town.

In the meanwhile we have enacted local laws to protect our town roads from damage in the event that the State does allow drilling in our town of neighboring towns.

Therefore, based upon several opinions of the New York State Committee on Open Government that a Town Board does not need to receive public comment at a meeting, it is the determination of this Board that hereafter no further comment will be received during the public participation portion of this or any future meeting regarding natural gas development until such time as New York State Department of Environmental Conservation completes its environmental review of such activity. However, any resident of the Town may submit in writing to the Town Clerk such additional materials or information that they wish this Board to consider at that time.

On a motion made by Kevin J. McKee, seconded by David K. Sexton
The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None;
CARRIED. Dated: September 11, 2012.

Supervisor Decker gave the floor to Dog Control Officer, Brian Moore. Moore presented the Board with the Report of 8/14/12-9/11/12. The Report was reviewed.

The Minutes of the Regular Meeting dated 8/14/12 & Minutes from Bid Meeting on 09/06/12 were presented to the Board. Motion was made by Kevin J. McKee, seconded by David K. Sexton and all approved that the Minutes of the Regular Meeting dated 8/14/12 & Bid Meeting on 09/06/12 be accepted as presented.

Town Clerk's Report for August 2012 was reviewed. Motion was made by David O. Martin, seconded by David K. Sexton and all approved that the Town Clerk's Report for August 2012 be accepted as presented.

The Supervisor's Report for July was reviewed. On a motion made by David O. Martin, seconded by David K. Sexton and all approved the Supervisor's Report for July to be accepted as presented.

Supervisor Decker gave the floor to Highway Superintendent, Gerald Seymour. Seymour spoke regarding the Town Highway Salt Storage Building Bids. Bids were received by CB Structures/ Doubletree and Burt Lee and Son Building and Excavation, LLC.
Town Clerk asked town board to approve the following resolution awarding Town Highway Salt Storage Building contract to lowest responsible bidder. On a motion made by Kevin J. McKee, seconded by David O. Martin and all approved the following resolution be adopted as follows:

#58 – RESOLUTION -2012

AWARDING TOWN HIGHWAY SALT STORAGE BUILDING
CONTRACT TO LOWEST RESPONSIBLE BIDDER

WHEREAS, the Highway Superintendent (the "Superintendent") of the Town of Sanford (the "Town") has solicited sealed competitive bids for construction of a salt storage building for the Town (the "Project") said bids being returnable to the Town Clerk's Office by 2:00 PM on September 6, 2012 to be publically opened and read at the same date and time, and

WHEREAS, Burt Lee and Son Building and Excavation, LLC duly submitted such a bid at said time and place in the amount of $41,300.00 and CB Structures/ Doubletree duly submitted such a bid at said time and place in the amount of $47,254.00, and

(Continued on Page 155)

(Continued from Page 154)

WHEREAS, the bidding specification contained language in Article 17.1 thereof giving the Owner the right to waiver all informalities not involving price, time or changes in the Work, and

WHEREAS, Lake Engineering, Engineer for the Town, has reviewed the specifications of the Project so bid and compared the same to the bidding specifications, and has found only minor deviations from the bidding specifications by the low bidder none of which involve price, time changes in the Work, which he recommends be waived, to wit:

1. the bid check was not a certified check, and

2. the low bidder did not indicate membership in an accredited post-frame builders Program, and

3. the non-collusive resolution did not include the date the meeting was held authorizing Burt Lee to submit the bid and non-collusive certificate, and

WHEREAS, the Town Board of the Town of Sanford has determined that it is the best interest of the Town to waive said informalities and award the contract for the Project to Burt Lee and Son Building and Excavation, LLC in the amount of $41,300.00

NOW, THEREFORE, BE IT RESOLVED pursuant to section 222 of the Town Law that the Supervisor of the Town of Sanford be and is hereby authorized to enter into an agreement with Burt Lee and Son Building and Excavation LLC in the amount of $41,300.00 to construct the Salt Storage Barn in accordance with the bidding specifications

****

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

Seymour reported on the new computer which is currently installed and working great.

Seymour reported no updates from State Police regarding sign issue. A discussion was held.

Seymour spoke on 6-10 tires at Town Garage and putting them out to bid to the general public, as is. A discussion was held. Seymour will contact other townships and town attorney to ensure it is not a liability issue for the Town of Sanford.

Supervisor Decker gave the floor to Allson Lang, Town Clerk. Lang spoke on scheduling a Budget Workshop Session, Board agreed on October 10, 2012 at 7:00 PM.

Town Clerk asked the Board to approve reappointing Harry Hartz as Board of Assessment Review Member for a 5 year term begs inning 10/1/2012-09/30/2017. The motion was made by Kevin J. McKee, seconded by David K. Sexton and all approved that the following resolution be adopted as follows:

#59 -RESOLUTION-2012

REAPPOINTMENT OF HARRY HARTZ AS A BOARD OF ASSESSMENT REVIEW MEMBER

RESOLVED, that the Board of the Town of Sanford, Broome County, New York, do hereby Appoint Harry Hartz, as Board of Assessment Review Member. Term: October 1, 2012 to September 30, 2017.

****

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

Town Clerk asked the Town Board to consider adopting a resolution authorizing application for grant by the Town of Sanford Justice Court. The motion was made by David O. Martin, seconded by David K. Sexton and all approved the following Resolution:

#60 -RESOLUTION-2012

AUTHORIZING APPLICATION FOR GRANT BY THE TOWN OF SANFORD JUSTICE COURT

(Continued on Page 156)

Section 1. WHEREAS, the Town of Sanford Town Justice Department has requested permission to make an Application for the Justice Court Assistance Program in the form of an Application, and

WHEREAS, this Town Board has carefully considered this proposed Application and has approved the same, and to request up to the maximum amount available, now therefore, it is hereby

Section 2. RESOLVED, that this Board hereby authorizes the Town of Sanford Justice Department to submit a Grant Application, a copy of which is attached and incorporated herein for all purposes.

****

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker; AYE; Councilman David O. Martin; AYE; Councilman David K. Sexton; AYE; Councilman Kevin J. McKee; AYE; NOES: None; CARRIED. Dated: September 11, 2012.

Town Clerk asked the Town Board to consider adopting a resolution authorizing Oliver N. Blaise of Coughlin & Gerhart, LLP to commence an action against the responsible parties to recover damages. The motion was made by Kevin J. McKee, seconded by David K. Sexton and all approved the following resolution be adopted as follows:

#61 – R E S O L U T I O N -2012

AUTHORIZING ATTORNEY OLIVER N. BLAISE OF COUGHLIN & GERHART, LLP TO COMMENCE AN ACTION AGAINST THE RESPONSIBLE PARTIES TO RECOVER DAMAGES SUFFERED BY

The Town Board of the Town of Sanford duly convened in regular session, does hereby resolve as follows:

WHEREAS, Gerald D. Seymour, Jr. Highway Superintendent of the Town of Sanford, has informed the Sanford Town Board of certain damage caused to Old Plank Road, a town highway of the Town of Sanford, in front of property know as 299 Old Plank Road. This damage was allegedly caused on or about July 26, 2012 when certain heavy equipment located at the address owned by Blaine Elsbree was attempted to be moved from that location allegedly by representatives of Nealon Transportation, Inc. without placing proper cover to protect the road from being damaged by that equipment. Mr. Seymour reports further damage was caused when the hydraulics of that equipment failed as a result of which a quantity of oil leaked from the equipment onto the roadway causing significant additional damage, and

WHEREAS, Herbert A. Kline, Attorney for the Town, has communicated with both allegedly responsible parties by certified mail, return receipt requested, requesting they arrange for their respective insurance carriers to contact said attorney to discuss arrangements for repairing said damage, and

WHEREAS, Nealon Transportation Inc. has advised Mr. Kline that said company was not responsible for causing said damage, and

WHEREAS, neither Blaine Elsbree or his insurance carrier has contacted Mr. Kline in response to his said request, and

WHEREAS, the agreement between Mr. Kline and the Town for the year 2012 provides among other things that "4. The Lawyer shall be compensated at the hourly rate of $195.00 for the performance by the Lawyer of the following legal services which do not occur on a regular basis but for which the Town Board expressly authorizes and requests the Attorney's assistance:

A. Furnishing legal services in connection with litigation commenced by the Town. "And

WHEREAS, Mr. Kline has suggested that the Town engage Oliver N. Blaise, Esq., a partner in the law firm of Coughlin & Gerhart, LLP, of which Mr. Kline is affiliated in an Of Counsel arrangement, whose practice concentrates in matters regarding litigation, to pursue the responsible party for the damage caused to Old Plank Road,

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Sanford in regular session duly convened as follows:

(Continued on Page 157)

Section 1. The Sanford Town Board hereby authorizes Attorney Oliver N. Blaise to pursue the claim of the Town against the party or parties responsible for said damage caused to Old Plank Road on or about July 26, 2012.

Section 2. For his services hereunder, Attorney Oliver Blaise shall be compensated at the rate of One Hundred Ninety Five Dollars ($195.00) per hour in connection with said action, the same amount as set by said agreement with Herbert A. Kline, attorney for the Town. Any requests for payments pursuant to this Resolution shall be set forth in a signed, itemized voucher to be submitted to the Sanford Town Board for its review, audit and approval.

Section 3: This Resolution shall take effect immediately.

****

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

Code Enforcement Officer, Walter Ottens submitted Building Permit Report for August 2012.

Supervisor Dewey A. Decker received a copy of a petition Oquaga Lake Sewer residents sent to Broome County Highway Department regarding Oquaga Lake Road. A discussion was held.

Councilman Kevin J. McKee spoke on a new web based time keeping system, Time Clock plus, for non-salary employees. McKee explained benefits with having the new system to the Town Board. On a motion made by David O. Martin, seconded by David K. Sexton and all approved to start 30 day trial period when Secretary, Summer Reis is comfortable with program.

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

Supervisor Dewey A. Decker spoke of need to go into Executive Session.
The motion was made by David K. Sexton, seconded by David O. Martin and all approved that at 9:02PM, the Town Board go into Executive Session under Public Officers Law SS105 (1) (f) Medical, Financial, Credit or Employment History of a particular person or Corporations or relating to appointment, promotion, demotion, discipline or removal.

****

The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

The Motion to adjourn from Executive Session was made by Kevin J. McKee, seconded by: David K. Sexton, and all approved, time: 9:27PM
The foregoing was put to a Roll Call Vote as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None; CARRIED. Dated: September 11, 2012.

The Motion was made by Councilman David O. Martin, seconded by David K. Sexton and, all approved that the Bills be paid as presented:
The Total Amounts and Voucher Numbers submitted to Town Clerk by Supervisor's Secretary.
Date of Audit: 9/11/2012 Abstract #9 – General: $15,330.44 – Voucher #508, 513-518, 520-522, 525-547; Highway: $101,777.13 – Voucher #523, 548-562; Sewer O & M: $14,983.57 – Voucher #509-510, 519-520, 563-565.

Since no further business was at hand, on a Motion made by Kevin J. McKee, seconded by: David K. Sexton and all approved that the Meeting be adjourned at 9:53 PM.

Alison Lang, Town Clerk

TOWN OF SANFORD

REGULAR MEETING — August 14, 2012

PRESENT:	Dewey A. Decker	Supervisor
	David O. Martin	Councilman
	R. Gordon Tyler	Councilman
	David K. Sexton	Councilman
	Kevin J. McKee	Councilman
ALSO PRESENT:	Gerald Seymour	Highway Superintendent
	Alison Lang	Town Clerk

GUESTS: Victor Russo, Highway Employee; Bryan Moore, Dog Control Officer; Deb Stover, Deposit Courier; Herb Kline, Town Attorney; Diana Vanderbilt, 854 William Law Road; Mary Ellen Decker, 54 Schoolhouse Road Windsor, NY; John Russell, 94 Schoolhouse Road, Windsor, NY; Frank & Toni Carroll, 304 Loomis Hill Road; Judith & Gerhard Mann, 1 Vincent Road; Thomas Porpora, 1035 Schofield Road, Deposit, NY; Curt B. Lawson, 382 Shaver Hill Road, Deposit, NY; D'layne & Frank Chamberlin, 500 Farnham Road, Windsor, NY; Larry Schaefer, 9938 State Hwy. 8, Deposit, NY 13754; Bob & Fran Ragusa, 1022 N. Sanford Road; John Donaldson, 180 Gulf Summit Road; Lawrence Snyder, 110 Bryce Road, Windsor, NY; Tony Warner, 69 Main Street, Deposit, NY; Dennis & Pat Hommemann, 958 Rte. 41, Deposit; Hilton Evans, 25 Court Street, Deposit; Nadine & John Viviano, 854 William Law Road, Windsor, NY; Brad Decker, 16 Schoolhouse Road; Rich Altschuh, 590 Shaver Hill Road; Rick Williams, 584 Shaver Hill Road; James Hinkle, 318 Shaver Hill Road; Dorothy & Angelo Tripido, 940 State Rte. 41; Bill & Mary Kohanik, 257 Oquaga Lake Road; Alice Willcutt, 224 Bailey Road, PA; Nick Barone, Deposit, NY; Gail Andresen, Deposit, NY; Richard Ray, Shaver Hill Road, Deposit, NY; Leonard Snyder, 110 Bryce Road; Jean Lawson, 382 Shaver Hill Road, Deposit; Jean-D Bizot, 202 Clark Road; Susan Bishop, 24 Church Street; Brian Stevens, 48 Fourth Street; Terrill & Mary Ryan, 59 4th Street, Deposit; Margaret Davidson, 20 Faulkner Road, Hancock, NY; Mr. & Mrs. W. Casey, 184 Lumber Road; Joseph Bivone, 462 NYS Rt. 41, Deposit; Gail & Mike Musante, 199 Front Street, Deposit; Theresa Reis, 63 Court Street, Deposit; Joan Pike, 48 Court Street, Deposit; William A. Stankan, 765 Schofield Road; Carl Andresen, 211 Nelson Frank Road; David Vanpelt, 13 Meadowlark Drive; William James Lawson, 382 Shaver Hill Road; Douglas & Nancy Vitarius, 2452 Old Rte 17, Windsor, NY; Patrice & Paul VanSlyke, 318 Farnham Road; Elmer Mitchell, Golf Course Road; Elizabeth Davidson, 75 Faulkner Road, Hancock; Molly & William Blanda, 20 Faulkner Road, Hancock; Diane MacInnes, 732 Oquaga Lake Road.

Supervisor Dewey A. Decker called the Meeting to order at 7:00 PM with the Pledge of Allegiance at the Town Hall, 91 Second Street, Deposit, New York 13754.

PUBLIC PARTICIPATION:
(READ BY COUNCILMAN KEVIN J. MCKEE)
MOTION TO BE MADE TO LIMIT DISCUSSION

We have been advised that the Committee on Open Government has stated that a public body such as our Town Board can adopt reasonable rules to ensure fairness i.e., allowing those who want to speak a specific period of time to express their views. We have already received extensive information and materials by interested parties at prior meetings on the subject of involvement of the Town and this Town Board in particular as to future natural gas development if and when the moratorium imposed by the State of New York is lifted. I see that there are a number of people present who have discussed their views on this subject at our July meeting.

Therefore, in order to treat all persons who wish to participate in further discussion on that subject in a fair manner, I move that any persons who have not previously spoken at our July meeting in opposition to natural gas development be given three minutes each but not more than a total of 30 minutes to present their thoughts, and if there is time remaining in those 30 minutes that persons who did speak at our July meeting can also repeat their views for three minutes each. The three minute rule was suggested by the New York State Committee on Open Government in a 2009 Opinion.

I further move that any persons who have not previously spoken at our July meeting in favor to natural gas development be given three minutes each but not more than a total of 30 minutes to present their thoughts, and if there is time remaining in those 30 minutes that persons who did speak at the July meeting can also repeat their views for three minutes each.

(Continued on Page 150)

(Continued from Page 149)

Of course, the Town Board, upon approval of a motion to do so, may, for good cause expressed in motion, reduce or extend the time during which an individual may speak.

Of course, in addition to expressions of opinion made at this meeting, we will be happy to receive written comments in favor of or against natural gas development which may be addressed to this Board in care of the Town Clerk.

R. Gordon Tyler seconded that motion, a roll call vote was taken as follows: Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: August 14, 2012

The floor was given to guests in favor and not in favor of hydraulic fracturing. A petition requesting a moratorium containing 400 signatures was received from Sanford-Oquaga Area Concerned Citizens (SOACC), written comments were also received from Alice Willcutt, Joan Pike, Brian Stevens, Patrice VanSlyke, & Lawrence Snyder.

The Oquaga Lake Sewer report for 7/10/12-8/14/12 was received and reviewed by the Town Board. Motion was made by Kevin J. McKee, seconded by David K. Sexton and all approved that the Oquaga Lake Sewer report for 7/10/12-8/14/12 be accepted as presented.

Supervisor Decker gave the floor to Dog Control Officer, Bryan Moore. Moore presented the Board with the Report of 07/10/12-08/14/12. The Report was reviewed.

Dog Control Officer spoke regarding the Town of Sanford having a vet on hand for emergencies. A discussion was held. DCO also asked the Board for approval to purchase a dog kennel to harbor dogs with the cost to be split with the Town of Deposit. A discussion was held. On a motion made by David K. Sexton and seconded by R. Gordon Tyler, and all approved having Valley Veterinary Service for the Town of Sanford and approval to purchase a dog kennel with cost to be split with the Town of Sanford.
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: August 14, 2012

The Minutes of the Regular Meeting, Dated: 7/10/12 were presented to the Board. Motion was made by David O. Martin, seconded by R. Gordon Tyler and all approved that the Minutes of 7/10/12 be accepted as presented.

Town Clerk's Report for July 2012 was reviewed. Motion was made by R. Gordon Tyler, seconded by David K. Sexton, and all approved that the Town Clerk's Report for July 2012 be accepted as presented.

The Supervisor's Report for June was reviewed. Motion was made by R. Gordon Tyler, seconded by David O. Martin and all approved that the Supervisor's Report for June be accepted as presented.

The Supervisor's Report for June was received.

Supervisor Decker gave the floor to Highway Superintendent, Gerald Seymour. Seymour reported street signs being stolen from various locations within the Town of Sanford. Seymour reported contacting police on this matter. A discussion followed.

Seymour spoke regarding Town of Sanford Highway Employees and obtaining copies of driving records for insurance purposes. DMV waived $90.00 fee after receiving a letter from the Town Clerk stating the records were for insurance purposes only. A discussion followed.

Seymour reported meeting with Debbie Preston on a Road Usage Agreement that would cover all municipalities together. A discussion followed.

(Continued on Page 151)

FOIL 140255 000168

(Continued from page 150)

Seymour reported on meeting with FEMA representatives with Councilman Kevin J. McKee regarding the Town of Sanford Mitigation Plan.

Seymour reported on an accident on Page Pond Road with damage to Town of Sanford property. An insurance check was issued to Town by the women involved in accident. A discussion followed.

Seymour reported on an accident on Old Plank Road. Accident caused roadway damage and is being reviewed by Town Attorney. A discussion followed.

Seymour reported on blacktop work being done at the Town of Sanford Municipal Building.

Seymour asked Boards permission to advertise for Bids pertain to the Salt Containment Building. A discussion was held. On a motion made by Kevin J. McKee and seconded by David K. Sexton and all approved the following Resolution be accepted as follows:

#56 – RESOLUTION – 2012

AUTHORIZING SEEKING COMPETITIVE
BIDS FOR SALT BARN

WHEREAS, the Town Board of the Town of Sanford (the "Town"), has engaged Ronald B. Lake PE of Lake Engineering (the "Engineer") to provide engineering services for a design proposal, supervision of bidding and construction and attendant services (the "Engineering Services") for the construction of a salt barn for the Town Highway Department (the "Project"), including the preparation of plans and specifications for construction of the Project, which documents have been approved by Highway Superintendent and Town Board, and are therefore ready for the solicitation of competitive bids;

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Sanford in regular session duly convened as follows:

1. The Town Clerk be and she hereby is authorized in full compliance with all applicable laws, with the assistance of the Engineer and the Attorney for the Town, to solicit competitive bids for the Project, which bids shall be returnable at the Office of the Town Clerk by 2:00 o'clock PM September 6, 2012 EDST.

2. This resolution shall take effect immediately.

* *

A roll call vote was taken as follows:
Supervisor Dewey A. Deckert AYE; Councilman David O. Marthu AYE; Councilman R. Gordon Tyler AYE; Councilman David K. Sexton AYE; Councilman Kevin J. McKee AYE; NOES: None
CARRIED. Dated: August 14, 2012

Supervisor gave the floor to Town Clerk, Alison Lang. She gave the Town Board an update on the Town of Sanford CDBG Grant, drawdown #10 & #11 completed and on schedule.

Town Clerk reported on an owner on Oquaga Lake reporting being charged for 2 units with the Oquaga Lake Sewer, but after investigation by Code Enforcement Officer, Walter Ottens, owner should be charged with 3 unit's b/c of 3 individual apartments. A discussion followed. On a motion made by David K. Sexton, seconded by R. Gordon Tyler and all approved to charge the owner for 3 units not 2.
A roll call vote was taken as follows:
Supervisor Dewey A. Deckert AYE; Councilman David O. Marthu AYE; Councilman R. Gordon Tyler AYE; Councilman David K. Sexton AYE; Councilman Kevin J. McKee AYE; NOES: None
CARRIED. Dated: August 14, 2012

Clerk reported on an evaluation letter regarding the Code Enforcement Officer from ISO, Insurance Services Office, Inc.. A discussion followed.

(Continued on Page 152)

(Continued from Page 151)

Code Enforcement Officer Walter Ottens, submitted Building Permit Report for 7/10/12-8/14/12.

Town Clerk asked Board approval for Supervisors Secretary, Summer Reis to attend Schooling in September. The Motion was made by R. Gordon Tyler, seconded by David O. Martin and all approved to approve the following Resolution be adopted as follows:

#57 – RESOLUTION -2012

APPROVING SCHOOLING FOR SUPERVISORS SECRETARY, SUMMER REIS IN SEPTEMBER 2012

RESOLVED, that the Town Board of the Town of Sanford, Broome County, New York, do hereby approve schooling for Supervisors Secretary, Summer Reis in September 2012 with payment for expenses incurred.

****

A roll call vote was taken as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: August 14, 2012

Town Clerk asked the Town Board to consider scheduling a Public Hearing on September 11, 2012 to hear comments and objections regarding amendments made to the Land Use Management Local Law of the Town of Sanford, Broome County, New York. On a motion made by David K. Sexton, seconded by R. Gordon Tyler and all approved scheduling the Public Hearing on September 11, 2012.

A roll call vote was taken as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: August 14, 2012

Supervisor Decker spoke on STE, Southern Tier East Regional Planning Development Board. A discussion followed.

Councilman Kevin J. McKee spoke on MEGA (Municipal Electric & Gas Alliance). A discussion followed. On a motion made by Kevin J. McKee, seconded by David K. Sexton and all approved to switch suppliers to MEGA on conditions of length of term of contract (26 Month Term).
A roll call vote was taken as follows:
Supervisor Dewey A. Decker: AYE; Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE; Councilman Kevin J. McKee: AYE; NOES: None
CARRIED. Dated: August 14, 2012

Bills were presented to the Board.
The Motion was made by Councilman R. Gordon Tyler, seconded by David O. Martin and all approved that the Bills be paid as presented:
The Total Amounts and Voucher Numbers submitted to Town Clerk by Supervisor's Secretary.

Date of Audit: 8/14/12 Abstract #8 – General: $14,356.94 – Voucher #450-451, 454-461, 467-482, 506-507; Highway: $118,035.38 – Voucher #449, 452, 462-463, 483-502; Sewer O & M: $3,585.19 – Voucher #453, 464-465, 503-505.

Since no further business was at hand, on a Motion made by Kevin J. McKee, seconded by David K. Sexton and all approved that the Meeting be adjourned at 9:15PM.

Alison Lang

Alison Lang, Town Clerk

[illegible] approval of a road use agreement is an Unlisted action under 6 NYCRR 617.2;

NOW THEREFORE, BE IT RESOLVED, that the Town Board hereby makes a determination that the road use agreement is a Unlisted action under 6 NYCRR 617.2; and further

RESOLVED, that the Town Board hereby declares itself lead agency pursuant to SEQR for the environmental review of said road use agreement; and further

RESOLVED, that the review will not be a coordinated review.

RESOLVED, that, based upon the information and analysis in the short environmental assessment form that the proposed action does not result in any significant adverse environmental impacts.

RESOLVED, that this resolution will take effect immediately.

The foregoing Resolution was put to a Roll Call Vote as follows:
Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE;
NOES: None; ABSENT: Edwin V. Ditewig.
CARRIED. Dated: October 11, 2011.

Town Clerk asked Board Members excluding Supervisor Dewey A. Decker (Decker sat in audience during discussion) to consider adopting Resolution Authorizing Supervisor to Execute Road Use and Crossing Agreement with Bluestone Gas Corporation of New York, Inc. .On a motion made by David K. Sexton and seconded by R. Gordon Tyler and all approved that the following Resolution be adopted as follows:

#52 – RESOLUTION -2011
AUTHORIZING SUPERVISOR TO EXECUTE ROAD USE AND CROSSING AGREEMENT WITH BLUESTONE GAS CORPORATION OF NEW YORK, INC.

WHEREAS, BLUESTONE GAS COPORATION OF NEW YORK, INC. ("Bluestone") has advised the Town of Sanford ("Town") as follows:

1. Bluestone engages in natural gas gathering, including but not limited to pipeline construction, maintenance and operation; and

2. Bluestone intends to construct natural gas gathering lines and/or related appurtenances pursuant to orders of New York State Public Service Commission granting a certificate of environmental capability and public need and pursuant to other permits and authorizations (hereinafter "natural gas lines") and/or ancillary activities (collectively" natural gas activities"); and

3. Bluestone will necessarily need to traverse Town highways, roads, bridges and related free-owned land, rights-of-way or easements owned or maintained by the Town (collectively "Roads") with heavy machinery, including but not limited to, trucks, construction machinery and equipment and other related items; and

4. Bluestone will need to install the natural gas lines across Roads along Bluestone's natural gas line route and the Town agrees to such crossing of the Roads; and

5. Bluestone will necessarily need to conduct certain construction and restoration activities and locate natural gas lines within the Town, some of which may involve construction and restoration activities across Roads (hereinafter "construction activities"); and

6. That the nature of heavy vehicular traffic during natural gas activities, construction activities, reworking activities, and other activities will exceed the normal and anticipated use of public roadways within the Town's limits, causing distress to said Roads which may either by structural or functional and which in turn will increase overall maintenance, oversight, repair, and replacement costs to the Town in connection with the natural gas activities and which distress may be immediate or may be gradual and delayed, and also will exceed the design criteria for said roadways, thus causing greater than ordinary wear and tear and damaging of the roadways; and

WHEREAS, Bluestone being aware of the Town of Sanford Highway Excavation Local Law and the Town of Sanford Road Use Local Law is desirous of entering into a Road Use Agreement pursuant to Section 9 of said Road Use Local Law which provides, among other things, that

(Continued on Page 91)

"A Permitee, whom has more than one vehicle, which qualifies as High Frequency Truck Traffic, may request that the Town enter into a town-wide road maintenance agreement in lieu of separate permits of each vehicle(s) or oven a blanket permit. Said road maintenance agreement shall conform to the minimum requirements of this local law, would be executed by the Town and the Permitee and shall include such additional terms as are reasonably required by the Town, including but not limited to insurance, maintenance bond, truck traffic routes, traffic schedules, inspections and road surveys. All of the vehicles specifically listed in such agreement, including those owned by the holder, its agents and sub contractors, shall be deemed to be covered by such agreement, and upon execution of the agreement the Commissioner shall issue a blanket permit.", and

WHEREAS, the Attorney for the Town and Engineer for the Town have discussed and negotiated with the Bluestone attorney the attached Road Use and Crossing Agreement, which is satisfactory to the Attorney for the Town and Engineer for the Town, and

WHEREAS, the Town Board has made a determination that the said agreement is an Unlisted action under 6 NYCRR 617.2 and has declared itself lead agency pursuant to SEQR for the Environmental review of said road use agreement; based upon the information and analysis in the short environmental assessment form has determined that the proposed action does not result in any significant adverse environmental impacts.

NOW, THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Sanford in regular session duly convened as follows:

1. The Supervisor of the Town be and hereby is authorized to executed the attached Road Use and Crossing Agreement with Bluestone under the terms and conditions set forth in sais agreement.
2. This resolution shall take effect immediately.

The foregoing Resolution was put to a Roll Call Vote as follows:
Councilman David O. Martin: AYE; Councilman R. Gordon Tyler: AYE; Councilman David K. Sexton: AYE;
NOES: None; ABSENT: Edwin V. Ditowig.
CARRIED. Dated: October 11, 2011.

Town Clerk read letter of resignation of Edwin V. Ditowig, Town Councilman. On a motion by David K. Sexton, seconded by R. Gordon Tyler and all agreed to accept Resignation with regret.

Code Enforcement Officer, Walter Ottens, submitted Building Permit Report for January 1, 2011 to September 30, 2011.

Bills were presented to the Board.
The Motion was made by Councilman R. Gordon Tyler, seconded by David K. Sexton and all approved that the bills be paid as presented.

The Total Amounts and Voucher Numbers submitted to Town Clerk by Supervisor's Secretary.
Date of Audit: 10/11/11, General: $12,896.71- Voucher #539-541, 544-550, 554, 556, 558-565, 567-576; Highway: $35,252.41- Voucher # 557, 577-591; Sewer: $8,842.85- Voucher # 542-543, 551, 553, 555, 592-595.

Councilman R. Gordon Tyler noted that Edwin Ditowig's letter of resignation was not dated and there is a question as to when he wanted to make it official. He suggested we rescind the previous motion to accept his resignation and suggested that Board do not accept until a date is set. Motion made by R. Gordon Tyler, seconded by David O. Martin and all accepted to rescind previous motion until a date is set by Edwin V. Ditowig. A discussion followed.

Since no other business was at hand, on a Motion made by R. Gordon Tyler, seconded by David K. Sexton, and all approved that the Meeting be adjourned at 9:05 PM.

Allson Lang, Town Clerk