

## **OXFORD TOWN BOARD MEETING** **Wednesday, February 11, 2015**

The Monthly Meeting of the Oxford Town Board was called to order by Supervisor Lawrence Wilcox at 7:30 pm in the Village Hall for the transaction of such business that may lawfully come before the Board. The meeting opened with the salute to the flag of the United States of America.

Present were:

Supervisor: Lawrence Wilcox  
Council: Jerry Locke  
Alan Davis  
Ron Charles  
John Hofmann

Town Clerk: James W. Hemstrought Jr.  
Highway Superintendent: Timothy Tefft

Others Present: Eleven residents of Oxford per sign-up sheet.

### **Minutes Previous Monthly Meeting:**

Alan Davis made a motion to approve the minutes of January 14, 2014. Motion was seconded by Jerry Locke and carried with 5 Ayes.

### **Supervisor's Monthly Report:**

Supervisor Wilcox handed out the Financial Accounting Information Sheets, Investment and Certificate of Deposit Reports, as of January 31, 2015. He also gave the following Revenues, Appropriations and Checkbook Balances:

#### **January 2015**

Revenues	\$307,732.00
Appropriations	47,942.33

Check Book Balances:

General	\$142,559.29
Highway	132,557.06
T&A	5,902.59
Water District #1	1,331.94
Cemetery Restoration	3,144.80

### **PUBLIC HEARING ON PROPOSED LOCAL LAW #1-2015** **Additional Changes to Zoning Ordinance – Local Law #1-2007**

#### **Section 35 – Procedure for Submitting Special Exception Applications**

Supervisor Wilcox opened the Public Hearing at 7:45 pm. The affidavit of published legal notice dated January 23, 2015 and published on January 28<sup>th</sup>, 2015 in the Evening Sun newspaper was read. He said he would hear comments on the "Procedure for Submitting Special Exception Applications" only, as this is the reason for the Public Hearing.

He then read two letters received via e-mail from Patricia Koenig and Joan & Bruce Leonard as follows:

#### **Patricia Koenig**

To: Supervisor Lawrence Wilcox and Councilmen -Jerry Locke, Alan Davis, Ron Charles, John Hofmann

As you have heard many times, the primary purpose of zoning, as noted in Article II, Section 2 of the of Oxford Zoning Ordinance, is to "promote the health, safety, and general welfare of this community." This means the entire community, the entire town of Oxford. This does not mean just those in the residential districts. How is it possible to 'zone out' the industrial effects of traffic, pollution, noise and destruction of the landscape?

The board is charged with a commitment to municipal law-making based on community rights: the right to protect our health, safety, and welfare; our right to a sustainable and just community. I cannot fathom any justification for the proposed zoning changes that would allow for "drilling for gas and oil" and "material staging areas" (vaguely defined as "temporary material storage") by special exception in the agricultural and commercial districts – or anywhere in the town.

Do you have any idea what "materials" the town planning board would approve? Does the town planning board have any expertise in this area? Why would we need to have material staging areas? The only reason I can surmise is for development of gas/oil drilling, pipelines and compressor stations.

It is disappointingly clear that the proposed zoning changes favor gas development in any form you can get. I have lost faith that the town board members will do anything to protect the residents or properties of the town. Public opinion that is against drilling and material staging areas is consistently and repeatedly ignored. I urge you to prohibit "drilling for gas and oil" and related "material staging areas" in all districts of the Town of Oxford.

**Joan & Bruce Leonard**

To: Lawrence Wilcox, Oxford Town Supervisor, Town Councilmen and Town Planning Board Members

Since we are unable to attend the public hearing on Wednesday, February 11, 2015 we wish the following statement to be read and included in the recorded minutes of this meeting.

New York State has officially banned fracking. It seems that introducing an amendment to the zoning laws allowing "material staging areas" and "temporary material storage" for fracking operations is a blatant act of defiance against current state law. As elected officials you are entrusted to work for the good of all your constituents. The village and town are not mutually exclusive nor are the agricultural and commercial properties separate from the residential areas. Even if fracking was not banned statewide, your attempt to change current zoning to add wording clearly in favor of allowing gas development is a direct contradiction of your mandate to promote the health, welfare and safety of all residents in our community. The state has deemed the practice unsafe. State law supersedes town law.

Further, any trustee in a position to personally benefit from gas development should not be involved in any discussion or voting on the topic. This is clearly a conflict of interest and is in direct violation of public trust. I have heard that a majority of board members have a vested interest in pushing for fracking.

Stop trying to cram a revision of our zoning ordinance down our throats! If New York State ever rescinds the fracking ban, it will be after thorough investigation and assurances that procedural problems have been eliminated. Then, and only then should changes to ordinances be introduced. Passage of changes should be put up for a public referendum to insure that there could be no chance of lawsuits and that the majority of the community is on board with said revisions.

**Other letters received via e-mail:**

**Paul Brennan**

To the Oxford Town Board:

As a resident of Oxford, I have an interest in the direction our town is moving. The local laws dictate the overall character of our community. It is important that they reflect the sentiments of the people that live here. It is the task of the town government to identify what the residents desire and legislate laws to that end. Over the past several years, Oxford has been deeply divided regarding the issue of allowing drilling for gas. Many residents considered this possibility a much needed stimulus to the economy, yet others were hesitant for fear of irreversible environmental damage and changing of the bucolic nature of the area. A considerable amount of effort was expended by those from both sides of this issue, to sway legislation in their favor. With the passage of time, it appears by those who currently attend board meetings, that the sentiment of the vast majority is gas drilling should be banned from our town. Those who advocated for drilling no longer attend, possibly realizing this industry is not suitable for Oxford. The state has now determined that high volume hydro fracturing is unacceptable due to health and environmental risks. This should send up a red flag regarding the issue.

As town legislators, it is your job to fulfill the wishes of the people. I realize the town board has attempted to modify the original draft of the law to afford better protection for Oxford. Removing drilling in residential districts and adding a well designed protocol to guide the planning board in deciding special exception permits. All good work. But there is concern that the law, as currently written, may be vulnerable to challenge or preempted by the state. An outside written opinion, which has been requested many times, would put these questions to rest.

As a concerned resident, I have researched the SEQR portion of the law. A simple Google search and a phone call to the N.Y. State DEC, has revealed a fatal flaw in the SEQR procedure followed by the town board acting as lead agency. I feel that prior notice should be extended to the town pertaining to the environmental review and determination of significance for a SEQR Type 1 action. The completion of a FULL Assessment Form (EAF) is required. Take notice of statement # 1 added below. Apparently, as advised by the town attorney, only a short EAF was completed. As I understand it through my call to DEC, this mistake can open our law to challenge under Article 78. Should it be contested, part (such as staging areas) or all could be nullified. I suggest the board postpone a vote, because SEQR must be properly completed prior to taking final action, and that they consult with the town attorney regarding the verification of this possible error.

1. For Type I actions, a full EAF (see section 617.20, Appendix A, of this Part) must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. The lead agency is responsible for preparing Part 2 and, as needed, Part 3.

**Mina Takahashi**

For the better part of a year now, I and other residents have called on the town board to obtain a legal opinion in writing on the legality of our zoning ordinances related to oil and gas drilling. The town had already been informed in 2008 by then town attorney Roger Monaco that, "**I am advised by the Association of Towns that the New York State Environmental Conservation Act pre-empts the ability of the Town to regulate oil and gas drilling by means of zoning. In other words, the Town Zoning Law regulating oil and gas drilling is invalid and unenforceable.**"

Before the town board considers adding material staging areas as a permitted use by special exception, it should be clearly advised in writing by the town attorney on the legality and enforceability of the special-exception process for material staging areas. The NY State Environmental Conservation Law strips municipalities from regulating the operations and processes of the gas industry, and we all know that material staging areas are part of the operations and processes of the gas industry. Adding this permitted use by name could actually make it easier for the gas industry to set up material staging areas in our town. Our present zoning, with its "including but not limited to" language gives the town the ability to permit or deny any use not already listed as expressly permitted. The town gives away its authority when it lists activities as permitted uses by special exception if those activities are deemed part of the operations and processes of the gas industry.

It would be negligent for the town board to enact legislation that could weaken its authority without clear legal advisement in advance. There was consensus among board members last spring and from residents at the last public hearing in August to move forward with adopting the new noise ordinance and incorporating the cell tower regulations into the zoning ordinances. These are sensible additions to our zoning. I urge you to adopt these two proposed additions to our town zoning, and to table the rest until you obtain, review, and discuss a written legal opinion on the validity and enforceability of our zoning related to the operations and processes of the gas industry.

**Trellan Smith**

**Legal issues with the revised zoning:**

1. Despite repeated requests that it do so, this Board has still not requested nor received a written opinion from either its attorney or the Associations of Towns as to the validity and enforceability of 1) "oil and gas drilling" and 2) "material staging areas" as permitted uses by special exception. The State's highest court has upheld a town's right to prohibit – through zoning – solutions mining activities (including drilling for gas). But that same court has also clarified that if towns with zoning allow those activities as a permitted use, they do not have the legal authority to regulate them. If this board does not receive a written legal opinion on whether "by special exception" would be considered regulation as defined by the NYS's Environmental Conservation Law, then the residents of this town have no reason to believe the Town Board's claim that "material staging area" has been added as a protection and not as an invitation.

2. If it is the intention of this board to prohibit oil and gas drilling in the residential areas of Oxford, then the language of the zoning ordinance should clearly state that intention. The addition of "...but not limited to" to the uses permitted by special exception makes a mockery of any claim that this Board is removing the potential for gas drilling in those areas. All instances of "but not limited to" should be removed.

3. There are multiple and contestable errors in way the SEQR process was followed in adopting this new ordinance, and under the direction of the Town's attorney. An ordinance that is contestable is a weak ordinance. If those errors are not apparent to the Board or to the town's attorney, then the town should retain a new attorney.

**Ethical issues with the revised zoning:**

I have heard, on more than a few occasions, various members of this board describe their position as being "between a rock and a hard place." I have never thought that to be the case; the evidence of harm to human health and the environment was so abundantly clear. But any earlier perceived barriers to making a decision concerning gas drilling in Oxford have now been lifted:

1. After years of appeals, in cases brought both by a landowner and a gas company, the State's highest court upheld the right of a town to determine the activities it would allow and those it would prohibit. Any and all concern this Board had about its right to decide on such issues has now been settled. And any and all threats made by town residents that they will sue for takings are now mute.

2. Against all odds and expectations, New York State's Department of Environmental Conservation made the decision to prohibit high volume hydraulic fracturing.

3. And, again, against all odds and expectations, New York State's Department of Health, after exhaustively reviewing the scientific and health studies relating to HVHF (a compendium of which can be found at: [http://www.health.ny.gov/press/reports/docs/high\\_volume\\_hydraulic\\_fracturing.pdf](http://www.health.ny.gov/press/reports/docs/high_volume_hydraulic_fracturing.pdf)) determined that the potential risks to human health were simply too great, and too many of them yet unknown, and recommend that it not be allowed in New York State. Given all of the above, I do not believe it is possible for any member of this board, in good conscience, to allow "oil and gas drilling" to remain as a permitted use anywhere in Oxford. The choice is clear. And all barriers to making that choice have now been removed. If this Board votes to proceed as planned, then they will have made a grave and lasting decision for us all. And they will have made their intentions clear.

The following residents brought letters or articles, some of which were read: Tammy Angle-Reiss, Christina Bancroft, John Knapp, Dan Taylor and Irving Hall. The letters are on file in the Town Clerk's office for public perusal.

Ron Charles, Councilman, stated: what I see, is a difference of opinion. There are two ways of looking at everything. One side is looking at the changes giving the Town control with a say over these land use activities. The other side is looking at it as opening ourselves up to something that we don't want and litigation if we try to enforce restrictions. In one case, we just omit Oil and Gas Drilling as a permitted use in the Residential areas and say that it is sufficient to enforce it as not allowed. In another case, we are adding Material Staging Areas as a permitted use, so that we have a say whether or not it is allowed. There will always be lawyers on both sides and everything can be challenged. If we have our lawyer's view point as to the zoning ordinance being legal and enforceable, we will have done our due diligence.

A spirited discussion broke out between the residents and the Town Board, after which Supervisor Wilcox stated that in view of the many objections raised tonight, we need to contact the Town lawyer before proceeding with the proposed zoning changes.

Motion was made by Alan Davis and seconded by Jerry Locke to close the Public Hearing. Motion carried with 5 Ayes.

#### **COMMUNICATIONS:**

The January 2015 collateralized deposit account information report was received from BNY Mellon.

#### **OTHER BUSINESS**

Supervisor Wilcox recommended the approval of Gerald LeClar for a 5-Year Term on the Zoning Board of Appeals to 12-31-2019 and Frank Hofmann for a 5-Year Term on the Assessment Board of Review to 9/30/2019. Motion was made by Jerry Locke and seconded by John Hofmann to approve the appointments of Gerald LeClar for a 5-Year Term on the Zoning Board of Appeals to 12-31-2019 and Frank Hofmann for a 5-Year Term on the Assessment Board of Review to 9/30/2019. Motion carried with 5 Ayes.

#### **HIGHWAY SUPERINTENDENT'S REPORT:**

Tim Tefft, Highway Superintendent, reported that more sand is being hauled in to help with the extended winter weather use. Several pieces of equipment have had to be repaired due to breakdowns, but all are now back in service.

#### **BILLS & CLAIMS: February 2015**

Claims #21 thru #33, General Fund:	Total: \$ 5,247.35
Claims #14 thru #25, Highway Fund:	Total: \$12,830.75

Motion was made by Alan Davis and seconded by Ron Charles to pay the bills and claims. Motion carried with 5 Ayes.

The next monthly meeting of the Town Board will be held on March 11, 2015 at 7:30 pm in the Village Hall.

Meeting was adjourned by Supervisor at 8:37 pm.

James W. Hemstrought Jr.  
Town Clerk