

Minutes
Cayuga County Planning Board ❖ NYS GML 239 Review Meeting
January 19, 2012

The meeting was called to order at 9:05 AM in the Conference Room on the 5th floor of the County Office Building, 160 Genesee Street, Auburn NY 13021.

The following committee members were present: **Eileen O'Connor, Nick Colas (for Steve Lynch), Doug Kierst and Bruce Natale. Steve Koon was excused.** A quorum was thereby established.

Others present: Geoff Milz (Staff), Samantha House (Auburn Citizen)

MINUTES:

Minutes from November 17 and December 15, 2011 :

MOTION BY EILEEN O'CONNOR: Approve minutes.

SECOND BY DOUG KIERST: All members vote AYE. **Motion Approved and Carried**

The following municipal matters were submitted to the Committee for consideration pursuant to GML 239:

1. Town of Sennett – Local Law #3 of 2011 – Moratorium on Natural Gas Exploration, Extraction, Storage and Disposal

The Committee carefully considered the proposed local law. The following issues were discussed:

- use of moratoria in local land use regulations, the difference between a moratorium, a ban in a town with zoning and a ban in a town without zoning and the current status of proposed regulation of natural gas drilling in NYS.
- the status of existing transmission and natural gas support activities in the law
- the unsettled nature of current court cases in Dryden and Middlefield
- the Constitution of the United States commerce clause
- the local law's definition of radioactive material vs. federal definitions

MOTION BY NICK COLAS: Approve the matter with the following comments:

Comment #1: Due to the unsettled nature of current court cases in Dryden and Middlefield, the town could be exposing itself to litigation.

Comment #2: Section 6 of the law describes the establishment of legal, preexisting non-conforming use status for certain existing extraction activities in the town, but does not provide a means of establishing such status for support activities which currently exist in the Town of Sennett.

Comment #3: The definition of radioactive materials is too broad.

SECOND BY EILEEN O'CONNOR

ROLL CALL VOTE: Mr. Natale – NAY
Mrs. O'Connor – AYE
Mr. Kierst – NAY
Mr. Colas – AYE

BY A VOTE OF 2 AYES TO 2 NAYS THE MOTION FAILS.

The intermunicipal impact cited by those voting nay was the local restriction of interstate commerce by the local law – a power expressly given to Congress in the United States Constitution. Those voting AYE disagreed that the alleged violation of the Commerce Clause was a valid negative intermunicipal impact pursuant to the powers given to the Committee by New York State GML§239.

MOTION BY NICK COLAS: Take no action

SECOND BY EILEEN O'CONNOR

ROLL CALL VOTE: Mr. Natale – NAY
Mrs. O'Connor – AYE
Mr. Kierst – AYE
Mr. Colas – AYE

BY A VOTE OF 3 AYES TO 1 NAY THE MOTION IS APPROVED AND CARRIED.

2. **Town of Owasco – Local Law #3 of 2011 – Moratorium on Natural Gas Exploration, Extraction, Storage and Disposal**

The Committee carefully considered the proposed local law. The Committee found the law to be nearly identical in form and function as the Town of Sennett law.

MOTION BY EILEEN O'CONNOR: Take no action

SECOND BY NICK COLAS

ROLL CALL VOTE: Mr. Natale – NAY
Mrs. O'Connor – AYE
Mr. Kierst – AYE
Mr. Colas – AYE

BY A VOTE OF 3 AYES TO 1 NAY THE MOTION IS APPROVED AND CARRIED.

3. Town of Summerhill – Local Law #1 of 2012 – Prohibition on Natural Gas Exploration, Extraction, Storage and Disposal

The Committee carefully considered the proposed local law. The following issues were discussed:

- The top of page 7 did not include the town name
- The definition of radioactive material
- The United States Constitution Commerce Clause
- The pending lawsuits of Dryden and Middlefield
- The difference between a ban and a moratorium

MOTION BY BRUCE NATALE: Approve with comments

Comment #1: The definition of radioactive materials is too broad.

SECOND BY EILEEN O’CONNOR

ROLL CALL VOTE: Mr. Natale – AYE
Mrs. O’Connor – AYE
Mr. Kierst – NAY
Mr. Colas – NAY

BY A VOTE OF 2 AYES TO 2 NAY THE MOTION FAILS.

Those voting nay felt the committee was not being consistent in its approach to the issue of natural gas regulation. Mr. Natale stated that because he thinks drilling could occur in Summerhill, it should be allowed to pass a prohibition despite certain reservations about the local law’s content. Mrs. O’Connor felt that there would be no intermunicipal impacts associated with the law.

MOTION BY EILEEN O’CONNOR: Take no action

SECOND BY NICK COLAS

ROLL CALL VOTE: Mr. Natale – NAY
Mrs. O’Connor – AYE
Mr. Kierst – AYE
Mr. Colas – AYE

BY A VOTE OF 3 AYES TO 1 NAY THE MOTION IS APPROVED AND CARRIED.

4. Town of Brutus – Minor Subdivision – VanderKloet/Schell, 9128 Mower Road

The Committee carefully reviewed the materials provided to it by the Town of Brutus including the local application, the environmental assessment form, the agriculture data form a copy of the tax map and a survey map. The committee could find no intermunicipal impacts associated with the proposed subdivision.

MOTION BY EILEEN O’CONNOR: Return the matter without comment as no intermunicipal impacts could be discerned

SECOND BY DOUG KIERST: All members vote AYE. **Motion Approved and Carried**

5. Town of Locke – Minor Subdivision – Mattoon, 1260 Genoa-Locke Road

The Committee carefully reviewed the materials provided to it by the Town of Locke including the local application, the environmental assessment form, a copy of the tax map and a survey map. The committee could find no intermunicipal impacts associated with the proposed subdivision.

MOTION BY EILEEN O’CONNOR: Return the matter without comment as no intermunicipal impacts could be discerned

SECOND BY NICK COLAS: All members vote AYE. **Motion Approved and Carried**

6. Village of Aurora – Special Permit – Leffingwell House, 342 Main Street

The Committee carefully reviewed the materials provided to it by the Village of Aurora including the local application, the environmental assessment form, a map of the parking for Leffingwell House, correspondence to the Village Planning Board, Planning Board minutes from 12/14/11 meeting, and a resolution of the planning board (#11-2).

The committee discussed potential stormwater impacts associated with intensifying the use at this site. It noted that the schematic parking plan showed that the site would be graded and could result in erosion that could impact the lake. Bio-retention (rain garden) was suggested as a potential tool to mitigate stormwater impacts. The use of permeable pavers could be used to lessen the impact of parking on the grassed spaces.

MOTION BY BRUCE NATALE: Approve with comments:

Comment #1: Keep non-necessary soil disturbance to a minimum

Comment #2: Parking on grass could be an issue, consider the use of permeable pavement

Comment #3: Consider treating the stormwater runoff generated from this site on-site with rain-gardens, bio-retention and other green infrastructure

SECOND BY DOUG KIERST: All members vote AYE. **Motion Approved and Carried**

Motion to adjourn by Doug Kierst, Second by Steve Nick Colas/ all approving. Adjourned at 10:20 AM. The next regularly scheduled meeting is Thursday, February 16, 2012 at 9:00 AM.