

Lansing Town Gas Advisory Committee

Minutes Sept 28, 2011

Members Present: Rachel Bean, Larry Beck, Tom Butler, Suzanne Hinderliter, Bill Miller, Fred Schwarz; Town Board Liaison, Kathy Miller.

Guest speaker: David F. Slottje , Senior Attorney of Community Environmental Defense Council, Inc. (CEDC), a public interest law firm.

Larry Beck presided over the meeting.

Prior to David's power point presentation the committee discussed questions for a possible survey of Lansing residents on the question of gas drilling. No consensus was reached about whether we should proceed with the survey or the specific questions on it.

David suggested that our committee can get help formulating questions and setting up a petition from two people who have helped a committee in the Town of Ulysses with a *petition* favoring a ban (of gas drilling) . These persons are Michael Dineen and Janine Querles. (A meeting with Michael has been set up for later this week). CEDC has helped several communities work on wording of a ban through use of a petition. In all those communities, on average 70% of respondents to the petition favored a ban.

In his presentation David stated that a town does have the legal right to use land use laws to ban certain industrial uses including gas drilling. This is the holding of the Court of Appeals (the highest court of NY State).

David said another question is whether the State has "preempted" the right of a town to ban gas drilling within its boundaries. The law in question (NYState Oil & Gas Law, ECL paragraph 23-0303(2) states :

The provisions of this article shall supersede all local laws or ordinances relating to the **regulation** of the oil, gas and solution mining industries ; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law."

CEDC's position, then is that a town *may not regulate the operations* (operational processes) of the gas industry, but the town may prohibit the industry altogether. This potential for banning is based on a case decided by the Court of Appeals, although in a slightly different context (e.g. related to mineral mining.) He said this position is now a mainstream position, at least among neutral (not gas company) lawyers. He cited several legal opinions to support this position.

David read the Lansing Comprehensive Plan. He stated that the Plan, which is about 10 years old, should "not contain language that would be inconsistent with a ban," even if it is amended/updated due to changed conditions in the town.

There could be several challenges to a ban in Lansing including a lawsuit against the town such as has recently been brought against the Town of Dryden by Anschutz Corporation (a gas drilling corporation). Further, property owners who favor drilling are likely to challenge a ban.

Three options at the local level exist to ban drilling: through amendment(s) to zoning; through stand alone power of the local government to preserve health, safety and welfare (the so-called police power of the local government); and, through a moratorium to allow time for study prior to adoption of either of the other options. Any local law banning drilling must be rational and consistent, must be based on local land use impacts; and, the law cannot contest nor disagree with findings of the state.

If the Town decides to ban gas drilling, David advised that the ban must occur before the issuance of gas drilling permits by the Department of Environmental Conservation (NYDEC).

Submitted by Suzanne Hinderliter