

Minutes of the October 6, 2011 Meeting of the Lansing Fracking Committee

Members present were Larry Beck, Tom Butler, Rachael Bean, Suzie Hinderliter, William Miller, Kathryn Miller, Fred Schwarz, and a candidate for the Board?

The Lansing Town Lawyer, Guy Krogh, gave the legal side of addressing the fracking issue and they are summarized as follows:

- Guy Krogh has been involved for 4 to 5 years in gas and oil issues, starting with cliental in Pennsylvania.
- Article 8 of the NY State constitution is the statue for local government. NY State was originally true home-rule but the state constitution has limited home rule.
- Local municipalities can use super cession to override a general state law that applies to all and can use pre-emption, either expressed or implied. For example local municipalities can't override NY state pensions, nor can they override laws with variances.
- Local municipalities can regulate zoning but law is unclear as to whether they gas and oil rights. But Towns have enforcement duties such as building inspections. There is authority for towns to do something in enforcement.
- New York State can't pre-empt federal law but they can regulate clean air law and wetlands in harmony with federal laws. If wetlands are 12.4 acres or less their jurisdiction is left to the towns. Aquifers are important since applications on aquifers have to be processed by DEC. Since waters of the State have to be protected, lakes can be counted as aquifers. Qualifiers have to be mapped out first for regulation by the DEC. UNA's (Unique natives areas) such as the gorges and CEA's (Critical Environmental Areas) are recognized by the DEC.
- New York State also defines noise as an air pollutant.
- Road regulations are not pre-empted by State law but federal law can regulate interstate commerce. For example, a town can close a road if it is damaged since the town has to be concerned by the effect of the road on individuals and can require permits. However, companies usually try to work out a road agreement with the town. Danby has a baseline standard for road use set by the engineering corporation, Delta. Such a baseline study would cost about \$8,000. Accordingly, Dryden can ban a heavy industry based on road use.
- Having a moratorium is not recommended since they are temporary but not sustainable and usually results in court disputes. A moratorium is "a good shield but not a sword". The government is immune to law suits but New York State has done away with sovereign immunity.
- A town board has to have the will to fight if a zoning law is appealed in court. Mining technicalities have outpaced safety technicalities. The cost of doing nothing for a local municipality is high. Towns can enact ordinances on gravel removal is extractive mining but fracking is considered to be solution mining.
- Zoning ordinances translate the town's comprehensive plan into action. First the comprehensive plan has to be updated and then the zoning ordinances

have to be changed to follow the comprehensive plan. Therefore a town can regulate or ban fracking following the Comprehensive plan. The comprehensive plan for Lansing should be updated.

- In New York State, the exclusionary laws to protect individual rights are many. Zoning needs to be based on the use of the land so the zoning regulations can't exclude one industry. Heavy industry, towns, and villages have to be defined in the comprehensive plan. We should look at Danby's comprehensive plan.
- The Town Board can change the comprehensive plan themselves. They can appoint a Planning Board Committee to do it. A Comprehensive Plan Committee can be appointed but it would need a Planning Board Committee member. The committee can consist of individuals with varying interests such as farmers. Farming in New York State is considered to be use of the land to create income. A Town Planner should be brought in.
- "Takings" such as pertaining to property have been expanded but the owner has certain constitutional rights such as the right of capture at the surface of his property. However, the government has the right of Eminent Domain.
- The issue of a survey versus a petition was also addressed. Strong public opinion is very influential with board members.