

Town of Spafford Local Law No. 2 of the Year 2012

A local law to amend and supplement the Zoning Code of the Town of Spafford by:

Confirming and Clarifying that any Uses not Expressly Permitted are Prohibited in all zones but the FDD Zone; Articulating Certain Explicitly Prohibited Uses; Removing Certain Exceptions; Adding Certain New Definitions, and Changing Certain Existing Definitions; and Modifying, Clarifying, and Adding to the Provisions Regarding Special Use Permits, Area and Use Variances Generally, and Use Variances Respecting Explicitly Prohibited Uses, Specifically.

Be it enacted by the Town Board of the Town of Spafford as follows: ,

Article I. General Provisions Section

1.1. Authority for Adoption

The Town Board hereby adopts this Local Law pursuant to the authority described in the Town Law of The State of New York.

Section 1.2. Findings of Fact

The Town Board has heretofore made certain findings, determinations, and declarations relative to the matters set forth in this Local Law and enacted a Moratorium and a copy of the text of such findings, determinations, and declarations is set forth at Section 1. of **Appendix A** attached hereto (Moratorium).

Section 1.3. Purpose & Intent

The Purposes and Legislative Intent underlying the Town Board's passage of this Local Law are set forth at **Appendix A** attached hereto.

Section 1.4. Definition of "Existing Zoning Law," this "Local Law," and "this "Law"

As used in this Local Law, the term "Existing Zoning Law" shall mean and be the Zoning Ordinance of the Town of Spafford adopted January 14th, 2010, Amended May 12th, 2011, and as heretofore amended.

As used herein, the term this "Local Law" shall mean and be this Local Law No. 2 of 2012.

As used in Article II of this Local Law, the term "this Law," "this chapter," and "herein" shall mean, be, and refer to the Existing Zoning Law as amended by this Local Law.

Section 1.5. Interpretation

The statements of purpose, intent and findings are legislatively adopted along with the formal text of the amendments to the Existing Zoning Law effected by this Local Law. They are intended as a legal guide to the administration and interpretation of this Local Law and shall be treated as legislative history.

Article II. Amendments of Existing Zoning Law

2.1. Amendments to Article 1-Word Uses and Definitions of the Existing Zoning Law

A. Article 1-5 of the Existing Zoning Law is hereby further amended so as to delete the present definitions of "Mine" in the entirety, and so as to substitute the following text therefor:

"Mining and excavation" - Any of the following activities: (a) the extraction of overburden and minerals from the earth; (b) the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, sorting, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; (c) the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; (d) the disposition of overburden, tailings and waste at the mine location; or (e) any combination of the above activities. In no event shall "mining" be construed to mean, be, or include Natural Gas And/Or Petroleum Exploration Activities or Natural Gas And/Or Petroleum Extraction Activities (as those terms are respectively defined in Section 6A.4. of this Law), nor shall "mining" include the excavation, removal and disposition of minerals from the site of, and incidental to, a construction project, or excavations incidental to bona fide Farm Use activities provided, however, that such excavations, removal and disposition incidental to construction shall have received and be in compliance with all fill permits required by law. For the purpose of this definition:

(i) minerals - mean any naturally formed, usually inorganic, solid material located on or below the surface of the earth. "Minerals" include, but are not limited to, peat, topsoil, gravel, and stone. "Minerals" does not include Natural Gas (as that term is defined in Section 6A.4. of this Law)."

(ii) overburden - means all of the earth, vegetation and other materials that lie above or alongside a mineral deposit.

(iii) spoil and tailings - have the meanings given to them by Article 23 of the NYS Environmental Conservation Law or any similar or successor statute."

B. Article 1-5 of the Existing Zoning Law is hereby further amended so as to delete the present defined term "Public Utilities" and the present definition thereof in the entirety, and so as to substitute the following text therefor:

"Public Utility/Use - An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility use is a facility which is operated by a public utility, and which provides electric, gas, steam, telephone service, water or sewerage directly to the general public."

C. Article 1-5 of the Existing Zoning Law is hereby further amended so as to delete the present definition of "Special Permit Use" in the entirety, and so as to substitute the following text therefor:

"Special Permit Use - A use which because of its unique characteristics requires individual consideration through a procedure of review by the Zoning Board, in order to determine whether a special use permit should be granted, conditionally granted, or denied."

2.2. Amendments to Article VI-Zoning District Regulations

A. Article 6-1(B) "Permitted Uses "of the Existing Zoning Law (Permitted Uses) is also hereby amended to add at the end of the section the following language:

"Any use not specifically set forth as a permitted use in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Except as otherwise provided herein: (a) no land shall be cleared, excavated, or graded, no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located."

B. Article 6-2(B) "Permitted Uses "of the Existing Zoning Law (Permitted Uses) is also hereby amended to add at the end of the section the following language:

"Any use not specifically set forth as a permitted use in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Except as otherwise provided herein: (a) no land shall be cleared, excavated, or graded, no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building or structure shall hereafter be

erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located."

C. Article 6-3 (B) "Permitted Uses "of the Existing Zoning Law (Permitted Uses] is also hereby amended to add at the end of the section the following language:

"Any use not specifically set forth as a permitted use in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specifically set forth as a permitted use in said other district. Except as otherwise provided herein: (a) no land shall be cleared, excavated, or graded, no building, structure, or land shall hereafter be used or occupied, and no building, structure, or part thereof shall be erected, moved or altered, unless in conformity with the regulations herein specified for the district in which it is located; and (b) no building or structure shall hereafter be erected or altered to exceed the height, to accommodate or house a greater number of families, to occupy a greater percentage of lot area or to have narrower or smaller rear yards, front yards, or side yards, than is specified herein for the district in which such building or structure is located."

2.3 Amendment of Article VII Regulations Applicable to All Zoning Districts-Addition of Article 7-24 at end of section to add "Explicitly Prohibited Uses; Prohibition Against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes"

7-24 Explicitly Prohibited Uses. The following uses and activities (*being respectively defined below*) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

- (a) Land Application Facility;
- (b) Natural Gas And/Or Petroleum Exploration Activities;
- (c) Natural Gas And/Or Petroleum Extraction Activities;
- (d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;
- (e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;
- (f) Natural Gas Compression Facility;
- (g) Natural Gas Processing Facility;
- (h) Non-regulated pipelines;

- (i) Underground Injection; and
- (j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of this Section 6A.1. is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance. Collectively the above expressly prohibited uses may be referred to in this law as "Explicitly Prohibited Uses," any one of the above Expressly Prohibited Uses may be referred to in this law as an "Explicitly Prohibited Use," and any combination of more than one such use may also be referred to as "Explicitly Prohibited Uses."

7-24 (a) Prohibition against Natural Gas And/Or Petroleum Extraction. Exploration Or Production Wastes. The Town of Spafford hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies "with at least the minimum applicable requirements" set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes.

7-24(b) No Application to Customary Local Distribution Lines. Etc. The prohibitions set forth above in this Section, are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) prevent or prohibit the incidental or normal sale, storage, or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Farm, residential, business, commercial, and other uses within the Town. This language would not prohibit a farm from legally moving gas.

7-24 (c) Defined Terms. For purposes hereof, and in addition to the terms defined in Section 2.2 of this Law, the following terms shall have the meanings respectively set forth below:

Below-Regulatory Concern — Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line — Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law

of New York, Article 7, §120(2)(b).

Injection Well — A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.

Land Application Facility — A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

Natural Gas - Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas And/Or Petroleum Exploration Activities - Geologic or geophysical activities related to the search for natural gas, petroleum or other subsurface hydrocarbons including prospecting, geophysical and geologic seismic surveying and sampling techniques, but only to the extent that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas And/Or Petroleum Extraction Activities - The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes — Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic." and whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or

refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Farm Use.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility — Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump — Land upon which Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas Compression Facility — Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility — Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines — Those pipelines that are exempt or otherwise excluded from regulation under federal and/or state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Pipeline — All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material -- Material in any form that emits radiation, but only if such material

has been moved from its naturally occurring location through an industrial process. Such material is "radioactive material" for purposes hereof, whether or not it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation — The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface — Below the surface of the earth, or of a body of water, as the context may require.

Transmission Line — A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection — Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes by or into an Injection Well.

Underground Natural Gas Storage — Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines."

2.4 Amendment of Article VII Regulations Applicable to All Zoning Districts-Addition of Article 7-25 the Existing Zoning Law is hereby amended so as to insert the following new Article 7-25 therein, said new Section 7-25 to be inserted immediately after the text of present Section 7-24:

"Section 7-25- Pre-Existing, Legal Non-Conforming Natural Gas And/Or Petroleum Extraction Activities

Notwithstanding any provision of this Law to the contrary, any Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

1. If, as of the effective date of this Local Law, substantive Natural Gas And/Or Petroleum Extraction Activities are occurring in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all valid permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies for such activities, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses b. and c. of this Article 7-25.

2. Natural Gas And/Or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause 1. of this Article 7-25 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Article VII hereof.

b. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause 1. of this Article 7-25, or upon any other substantive cessation of Natural Gas And/Or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause 1. of this Article 7-25 for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas And/Or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 6A hereof.

c. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause 1. of this Article 7-25 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas And/Or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause 1. of this Article 7-25, and instead shall in all respects be prohibited as contemplated hereof."

2.5 Amendment to Article VII 26 of the Existing Zoning Law

Article 7 of the Existing Zoning Law is hereby amended so as to insert the following text as (new) clause 7-26 thereof, said new text to be inserted immediately following the text of clause of said Section 7-25:

" Any person who violates or is accessory to the violation of any provision of Article 6A hereof, which shall include without limitation any person who owns, occupies or uses any building, structure or premises which is in violation of any provision of Article 6A hereof, shall be guilty of an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the NYS Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for not more than ten (10) days, or both, for the first offense. Any subsequent offense within a three (3) month period shall be punishable by a fine of not more than Five Thousand Dollars (\$5,000) or imprisonment for a period of not more than thirty (30) days, or both. For purposes of this Section 18.2, each week (or portion thereof) that a violation of Article 6A of this Law exists shall constitute a separate and distinct offense."

2.6. Amendment to Article 15-13 (Severability) of the Existing Zoning Law

Article 15-13 of the Existing Zoning Law is hereby amended so as to delete the present text thereof (beginning "If any part or provision of this Local Law ...") in the entirety, and so as substitute the following text therefor:

"Invalidity and Severability: If any word, phrase, sentence, part, section, subsection, or other portion of this Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable."

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

2.7. Effective Date of this Local Law

This Local Law shall be effective upon filing with the office of the Secretary of State, and the Town Clerk is directed to immediately file a copy of this Local Law with the New York State Secretary of State as required by law.

Adopted by the Spafford Town Board on July 12, 2012