

TB Resolution No. 2011- 118 : Resolution adopting a Local Law amending the Zoning Chapter of the Town of Ithaca Code to add definition for Forest Resource, clarify definition of Mining, and clarify Permitted Principal Use in Light Industrial Zone regarding Fabrication and Assembly

WHEREAS, Chapter 270, Zoning, of the Town of Ithaca Code states in § 270-9, titled "Prohibition of uses", that "All uses not specifically set forth as permitted uses in a zone are expressly prohibited as uses in that zone"; and

WHEREAS, the exploration for natural gas, the extraction of natural gas, the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and related natural gas operations are not specifically set forth as permitted uses in any zoning district and are therefore prohibited in the Town of Ithaca; and

WHEREAS, the Town Board wishes to add one definition, clarify another definition, and clarify a provision in the Zoning Chapter to remove any possible interpretation of the Town of Ithaca Code as allowing the exploration for natural gas, the extraction of natural gas, the storage, transfer, treatment or disposal of natural gas exploration and production wastes, or related natural gas operations, even though such interpretation under the current Code would be implausible; and

WHEREAS, the Town's Conservation Zone and Agricultural Zone permit, among other things, the following uses: "Forest management and other forest resource uses, including the harvesting of timber in conformance with environmentally sound forestry practices"; and

WHEREAS, § 270-10 of the Town of Ithaca Code states that the purposes of the Conservation Zone include preservation of the outstanding natural features in certain areas of the Town, provision of a regulatory framework through which development can occur with minimal environmental impact, preservation of existing areas of contiguous open space, prevention of unnecessary destruction of woodland areas, preservation of natural stormwater retention and water quality functions, preservation of existing and potential agricultural land, and preservation of the natural resources and scenic beauty of Unique Natural Areas, as designated by the Tompkins County Environmental Management Council, to promote tourism as an important economic benefit to the Town. Section 270-10 further states the natural values and ecological importance of lands in the Conservation Zone include their diversity as plant and wildlife habitats, their existence as biological corridors, their importance for natural drainage features, their scenic views and rural character, and their importance as educational and recreational resources. Section 270-10 further states that certain lands in the Conservation Zone contain large areas of steep slopes, wetlands, highly erodible or poorly drained soils, and, in one instance, the City of Ithaca water supply, which must be taken into consideration in planning for future development; and

WHEREAS, § 270-25 of the Town of Ithaca Code states that the purposes of the Agricultural Zone include assurance of a proper economic and physical environment for continued agricultural use of land and other nonextractive natural resource land uses, maintenance of an open rural character to viable agricultural areas, assurance of compatible types and densities of development on lands that are usable for agricultural pursuits, and minimization of other land uses incompatible with farming; and

WHEREAS, it is clear from the purposes of these zones that the exploration for natural gas, the extraction of natural gas, the storage, transfer, treatment or disposal of natural gas exploration and production wastes, and related natural gas operations are inconsistent with the purposes of these zones and are not "forest resource uses"; the proposed local law simply removes any potential argument to the contrary by adding a definition for "forest resource" as "The various types of vegetation typically found in a forest, including trees, logs, saplings, brush, grass and other botanical forest products"; and

WHEREAS, § 270-5 of the Town of Ithaca Code defines "mining" as "The extraction of overburden and minerals from the earth", plus various activities regarding minerals, and "the disposition of overburden, tailings and waste at the mine location." "Minerals" is defined within the mining definition as "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." "Overburden" is defined within the mining definition as "all of the earth, vegetation and other materials which lie above or alongside a mineral deposit." "Tailings" is defined as having the meaning given to it by Article 23 of the New York State Environmental Conservation Law; and

WHEREAS, this definition of mining, which is very similar to that in the Mined Land Reclamation Law in Article 23 of the New York State Environmental Conservation Law, clearly applies to the removal of solid materials. This conclusion is consistent with § 270-28 of the Town of Ithaca Code, which allows mining operations in Agricultural Zones (the only zone where it is permitted), but only if the operator obtains a reclamation plan approved by the New York State Department of Environmental Conservation and a fill permit from the Town. Both of these requirements apply to the mining or excavation of solid materials only. The clarification of the definition of "overburden" within the definition of "mining" by adding the word "solid" before the word "materials" removes any potential argument that overburden somehow includes non-solid materials such as natural gas; and

WHEREAS, § 270-144 of the Town of Ithaca Code permits the following use in Light Industrial Zones (and such use is permitted by reference in Industrial Zones as well): "Industrial uses employing electric power or other motor power, or utilizing hand labor for fabrication or assembly"; and

WHEREAS, the Town has interpreted this provision to limit it to fabrication and assembly uses, regardless of whether fabrication or assembly is accomplished with the aid of electric or other power or by hand labor (as opposed to an interpretation that would allow any industrial use whatsoever employing electric or other motor power; such an interpretation is inconsistent for a zone where only light industry is permitted and light industry is distinguished from the "more intensive industrial uses" allowed in Industrial Zones); and

WHEREAS, the clarification of this provision by adding a comma after the phrase "or utilizing hand labor", is consistent with the purposes of the Light Industrial Zone and removes any possible ambiguity about whether this use is limited to fabrication and assembly uses or could be interpreted to allow natural gas exploration, extraction and related operations; and

WHEREAS, the Town Board agrees it is important to make these clarifications to the Town of Ithaca Code because the exploration for natural gas, the extraction of natural gas, and related operations in the Town of Ithaca would pose a significant threat to its residents' health, safety, and welfare. Widespread negative environmental impacts have resulted from natural gas exploration, extraction and related operations in

other areas, including negative impacts on groundwater quality, surface water quality, air quality, traffic, scenic resources, neighborhood and community character, vegetation and habitats. The absence of natural gas exploration, extraction and related operations from the list of permitted uses in the various zoning districts falls within the Town's powers to regulate land use through the zoning powers expressly delegated to towns in the New York State Statute of Local Governments § 10(6) and New York State Town Law § 261. In addition, this absence from the list of permitted uses is a reasonable exercise of the Town's police powers to prevent damage to the rights of citizens who would otherwise be negatively affected by such uses and to promote the interests of the community as a whole; and

WHEREAS, at its meeting on June 13, 2011, the Town Board of the Town of Ithaca reviewed and discussed the proposed local law and adopted a resolution for a public hearing to be held by said Town on July 11, 2011 at 6:15 p.m. to hear all interested parties on the proposed local law entitled "**A LOCAL LAW AMENDING THE ZONING CHAPTER OF THE TOWN OF ITHACA CODE TO ADD DEFINITION FOR FOREST RESOURCE, CLARIFY DEFINITION OF MINING, AND CLARIFY PERMITTED PRINCIPAL USE IN LIGHT INDUSTRIAL ZONE REGARDING FABRICATION AND ASSEMBLY**"; and

WHEREAS, notice of said public hearing was duly advertised in the Ithaca Journal; and

WHEREAS, said public hearing was duly held on said date and time at the Town Hall of the Town of Ithaca and all parties in attendance were permitted an opportunity to speak on behalf of or in opposition to said proposed local law, or any part thereof; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act ("SEQRA") and its implementing regulations at 6 NYCRR Part 617, adoption of said local law is an Unlisted action for which the Town Board of the Town of Ithaca, acting as lead agency in an environmental review with respect to adoption of this local law and utilizing Type I procedures, has on July 11, 2011 made a negative determination of environmental significance, after having reviewed and accepted as adequate the Long Environmental Assessment Form Parts I and II prepared by the Town's Planning staff;

NOW, THEREFORE, be it

RESOLVED, that the Town Board of the Town of Ithaca hereby adopts said local law entitled "**A LOCAL LAW AMENDING THE ZONING CHAPTER OF THE TOWN OF ITHACA CODE TO ADD DEFINITION FOR FOREST RESOURCE, CLARIFY DEFINITION OF MINING, AND CLARIFY PERMITTED PRINCIPAL USE IN LIGHT INDUSTRIAL ZONE REGARDING FABRICATION AND ASSEMBLY**", a copy of which is attached hereto and made a part of this resolution; and it is further

RESOLVED, that the Town Clerk is hereby authorized and directed to file said local law with the Secretary of State as required by law.