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Town of Naples

Local Law 2 of the year 2011

A Local Law to impose a six (6) month moratorium on the installation, construction, operation of and the submission and processing of applications for directional drilling and hydraulic fracturing for the production of natural gas within the Town of Naples.

Be it enacted for a period of Six (6) months by the Town of Naples as follows:

Section 1. Authority

This Local Law is adopted pursuant to the provisions of the Municipal Home Rule Law of the State of New York and Article 16 of the Town Law of the State of New York, with the procedural provisions of the Municipal Home Rule Law controlling.

Section 2. Short Title

This local law shall be known as: the "Town of Naples Directional Drilling and Hydraulic Fracturing For Production of Natural Gas Moratorium Law."

Section 3. Definition:

For the purposes of this Local Law the following shall have the meanings indicated:

1. **Code Enforcement Officer (CEO)** – The duly appointed Code Enforcement Officer of the Town of Naples or any Deputy or Assistant appointed or designated by the Town Board.

2. **Directional Drilling** – the act of boring a well into the ground, initially in an essentially vertical direction and then continuance of the boring at a different angle for the purpose of reaching a specific location in the earth.

3. **Hydraulic Fracturing (hydro-fracking)** – A method of creating fissures in underground rock formations by pumping liquid agents through a well under high pressure into the rock formation for the purpose of releasing gas from the rock formation.

4. **Town** – The Town of Naples

5. **Town Board** – The duly elected Town Board of the Town of Naples.

Section 4. Legislative Purpose

A. The purpose of this Local Law is to enable the Town of Naples to prevent directional drilling and hydraulic fracturing for the production of natural gas as well as the processing of any applications for directional drilling and hydraulic fracturing for the production of natural gas within the Town of Naples for a reasonable time pending the Town Planning Board and Town Board completing and adopting regulations controlling the directional drilling and hydraulic fracturing for the production of natural gas in the Town of Naples.

B. It is further the purpose of this Local Law to fulfill the Town's pre-construction constitutional, statutory and legal obligations to protect and preserve the public health, welfare and safety of the citizens of the Town of Naples, as well as to protect the value, use and enjoyment of property in the Town by temporarily prohibiting the submission and processing of applications for and commencement of operation of any directional drilling and/or hydraulic fracturing for the production of natural gas within the Town.

C. The Town Board finds that the following concerns must be considered with respect to the commencement of operation of any directional drilling and/or hydraulic fracturing operation for the production of natural gas in the Town of Naples and the possible adoption of regulations with respect thereto:

1. The Town of Naples presently has no zoning or other regulations laws related to directional drilling and/or hydraulic fracturing for the production of natural gas.

2. The Town Board has requested the Town Planning Board to examine how the Town could protect itself from unchecked operation of directional drilling and/or hydraulic fracturing for the production of natural gas, by adoption of appropriate regulations on a community.

3. Public comment at Town Board meetings has indicated that the directional drilling and/or hydraulic fracturing for the production of natural gas operations in other areas produce unanticipated negative impacts on aquifers, wells and local highway infrastructure, along with other potential negative impacts on a community.

4. Accordingly, any directional drilling and/or hydraulic fracturing may have an adverse impact upon the health, safety, welfare and comfort of residents of the community, particularly adversely impacting residents in the vicinity of such directional drilling and/or hydraulic fracturing operations.

5. The scenic and aesthetic attributes of the Town of Naples as they relate to the use of land in the Town for residential, recreational and tourism purposes and the potential negative impact thereon by directional drilling and/or hydraulic fracturing operations should be considered.

6. That directional drilling and/or hydraulic fracturing operation in the Town of Naples may have an adverse affect upon real estate values in the Town of Naples.

7. That the Town Board of the Town of Naples has legitimate goals and aims in protecting the aesthetic and scenic resources as well as real estate values and other natural resources within the Town.

8. That directional drilling and/or hydraulic fracturing operations without adequate protection for resources, may cause the Town to forever lose those resources.

9. That the aesthetics, view, vistas, visual impacts, noise impacts, safety, water resources, highway infrastructure, environmental and overall well being of the residents of the Town of Naples must be considered and are the responsibility of the Town Board as relates to adoption of regulations pertaining to directional drilling and/or hydraulic fracturing operations for production of natural gas.

D. That to allow directional drilling and/or hydraulic fracturing operations for the production of natural gas without addressing the above factors may have a permanent, significant and substantial negative impact on the nature and quality of life in the Town of Naples and on the health, safety, general welfare and comfort of its residents and their natural resources.

E. That to preserve the resources and character of the Town of Naples, to consider further the concerns of the residents and property owners of the Town of Naples, and to address further the needs of those residents and property owners, the Town of Naples finds that it requires time to study the impacts, effects and regulation of directional drilling and/or hydraulic fracturing operations for the production of natural gas in the Town of Naples.

F. The Town Board hereby finds that a moratorium of six (6) months duration, coupled with a hardship waiver procedure and mechanism for persons seeking to begin directional drilling and/or hydraulic fracturing operations for the production of natural gas within the Town of Naples, will achieve the balancing of interests between the public need to safeguard the resources and character of the Town of Naples, the health, safety and general welfare of its residents, and the rights of individual property owners, persons or businesses engaging in the directional drilling and/or hydraulic fracturing operations for the production of natural gas during such period.

Section 5. Imposition of Moratorium

A. For a period of six (6) months from and after the effective date of this Local Law: (i) no applications for the commencement, construction or erection of directional drilling and/or hydraulic fracturing operations for the production of natural gas shall be accepted or processed by the Town of Naples; (ii) no previously submitted applications for any purpose related to directional drilling and/or hydraulic fracturing operations for the production of natural gas will be further processed by the Town of Naples; (iii) the granting of any permit for same by any Board or Officer of the Town is prohibited; and (iv) installation, construction or erection of equipment or apparatus for directional drilling and/or hydraulic fracturing operations for the production of natural gas is prohibited within the geographic limits of the Town of Naples, except as provided in Section 6 of this Local Law.

B. For the purpose of this Local Law, an application shall be deemed to mean any pending or future request for official action by the Town Board, Town Code Enforcement Officer, Town Highway Superintendent or other Officer, official, employee, agent or designee

thereof of the Town of Naples which request and/or approval would in any way commence, further or continue a process whereby directional drilling and/or hydraulic fracturing operations for the production of natural gas, or any part or component thereof, is or may be undertaken, commenced, constructed or erected.

Section 6. Alleviation of Extraordinary Hardship

A. The Town Board of the Town of Naples may authorize exceptions to the moratorium imposed by this Local Law when it finds, based upon evidence presented to it, that deferral of action on an application for directional drilling and/or hydraulic fracturing operations for production of natural gas, the delay in commencement of directional drilling and/or hydraulic fracturing operations for production of natural gas, or any part or component thereof for the duration of the moratorium, would impose an extraordinary hardship on a landowner or applicant.

B. An application for an exception based upon extraordinary hardship shall be filed with the Code Enforcement Officer of the Town of Naples, including a fee of One Thousand and 00/100 Dollars (\$1,000.00) for each geographic site proposed for directional drilling and/or hydraulic fracturing operations for production of natural gas claimed to be subject to extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of extraordinary hardship and shall contain such other information and/or documentation as the Town Board or its designee, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.

C. A public hearing on any application for an exception to this Local Law based upon extraordinary hardship shall be held by the Town Board at a meeting of the Town Board no later than forty-five (45) days after the complete application for extraordinary hardship has been filed with the Code Enforcement Officer. The Town Board shall determine, by motion duly adopted, when an application based upon extraordinary hardship is complete.

D. In reviewing an application for an exception based upon a claim of extraordinary hardship, the Town Board shall consider the following criteria:

1. The extent to which the applicant has, prior to the effective date of this Local Law, received any final development approval for the proposed development and has obtained all the requisite leases, rights of way or other necessities for directional drilling and/or hydraulic fracturing operations for production of natural gas.

2. The extent to which the proposed directional drilling and/or hydraulic fracturing operations for production of natural gas would cause significant environmental degradation, adversely impact adjacent natural resource areas, cause public health, comfort or safety concerns and/or have a negative impact upon the Town of Naples, considering all the factors set forth in Section 4 of this Local Law.

3. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicant completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

4. The extent to which actions of the applicant were undertaken in good faith belief that the proposed directional drilling and/or hydraulic fracturing operations for production of natural gas would not lead to significant environmental degradation, undue adverse impacts on public health or safety, and/or have a negative impact upon the Town of Naples considering the factors set forth in Section 4 of this Local Law.

E. Mere delay or concern that regulations may be adopted or that the existing comprehensive plan may be amended is insufficient to constitute an extraordinary hardship under this section.

F. At the conclusion of the public hearing and after reviewing the evidence and testimony placed before it, the Town Board shall, in its sole discretion, act upon the application for an exception based upon extraordinary hardship. The Town Board may approve, deny or approve in part and deny in part the application being acted upon.

Section 7. Penalties

A. For the purposes hereof any person, in that person's individual capacity or acting as an employee, agent or officer of an entity, violating the provisions hereof, shall be subject to prosecution pursuant hereto.

B. A violation of this Local Law is hereby declared to be an offense punishable by a fine not to exceed \$250.00 or imprisonment for a period not to exceed fifteen (15) days, or both such fine and imprisonment, together with any other civil remedies available at law. Each day that a violation exists shall be a separate prosecutable offense pursuant hereto.

Section 8. Superseding and Repealer Provisions

This local law shall supersede the applicable sections of Article 16 of the Town Law, including, but not necessarily limited to Sections, 130, 261, 262, 263, 264, 265, 267, 268, 269 and 274-a, and Executive Law Section 381 to the extent inconsistent with the same and to the extent permitted by the New York State Constitution, the Municipal Home Rule Law or any other statute determined to be in conflict with the provisions hereof as pertains to industrial wind turbine towers, and/or industrial wind energy facilities, as defined herein.

Section 9. Validity

In the event that any section, sentence, clause or phrase of this Local Law is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding shall in no way affect the validity of the remaining portions of this Law.

Section 10. Effective Date

This Local Law shall become effective upon filing with the Secretary of State of the State of New York subsequent to having been duly adopted by the Town Board of the Town of Naples.