
Local Law 2011-6

Local Law Imposing a Moratorium on the Activity Known as
Hydraulic Fracturing and/or Hydrofracking in the Town of Dewitt 2011

Section 1. Title

This Local Law shall be referred to as the "Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt 2011”.

Section 2. Purpose and Intent

Pursuant to the statutory powers vested in the Town of DeWitt to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of DeWitt declares a six-month moratorium on the process known as hydraulic fracturing and/or hydrofracking, as well as a moratorium on any activity associated therewith or intending to support such process including the establishment, implementation, placement, or construction of such process or activity in the Town of DeWitt.

Section 3. Legislative Findings

Pursuant to its legislative powers and the Comprehensive Plan for the Town 2002, in 2010, the Town of DeWitt Town Board enacted a “Local Law imposing a moratorium on the activity known as hydraulic fracturing and/or hydrofracking in the Town of DeWitt”. The moratorium pursuant to that legislation has now expired. However, the issues which led to the decision to enact such moratorium have not abated, and the issues which led to the reasons of enacting the moratorium have also not ripened to the point that the town has been able to address or enact appropriate and comprehensive legislation to address this highly controversial issue.

This Board is mindful that a moratorium of an extended period is not generally advisable, however, not only is the issue hydrofracking unique, the issue as to the manner in which activity should be regulated in the Town of DeWitt and also the State of New York is an ongoing matter of great concern and controversy throughout the State.

As of this date, there is an Executive Order put in place by the former Governor of the State of New York which has suspended permits for hydrofracking in the State of New York. It is currently unknown as to the exact date that Order may be lifted. And, it is not yet clear as to what safeguards are anticipated to be put in place by the NYDEC and/or NY Legislature to protect New York waters, properties and people, nor exactly how long such regulation may take to enact. Accordingly, it is difficult for the Town to determine the type or extent of legislation that would be necessary, required or permitted, until well after the State clarifies its position. Without preliminary legislation in place by the State, the drafting of comprehensive legislation in the Town at this time would be unnecessarily time consuming with the possibility of some or all of it being rendered moot.

Although there are various sections of the Town of DeWitt Code which regulate some issues relating to energy production as well the export of energy off site, these regulations may not be sufficient cover some hydrofracking issues.

This Board is desirous of utilizing this extended moratorium period to continue to monitor and review state legislation, legislation of other towns and municipalities relating to this subject and gathering the continuing mass of information that is becoming available on this subject; including possible legislative language for towns as suggested by experts in the field. Particularly, when and if the permit prohibition by the state is lifted, this Board wants to have sufficient additional time to put appropriate legislation in place.

At this point it is important to note that there are no applications for hydrofracking pending in the Town, nor do there appear to be any potential applicants. Therefore, there does not appear to be any person or party substantially prejudiced by this moratorium at this time. Nonetheless, the Town Board determines that while the review and monitoring of and in consideration of the significant environmental issues surrounding the hydrofracking process and its potentially permanent and irreversible consequences, a moratorium on is appropriate and necessary in order to preserve the status quo until the new regulations can be adopted.

Section 4. Scope of Controls

A. During the effective period of this Local Law:

1. The Town Board of the Town of DeWitt shall not grant any approvals that would have as the result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

2. The Town Planning board shall not grant any preliminary or final approval to a site plan, special use permit, specific use permit or other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

3. The Town Zoning Board of Appeals shall not grant any variances, special use permits, specific use permits or any other permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

4. The Department of Development and Operations shall not issue any permit that would have as a result the establishment, implementation, placement, or construction of the process known as hydraulic fracturing and/or hydrofracking, including any activity associated therewith or intending to support such process including the establishment or implementation of such process or activity in the Town of DeWitt.

B. The Town Board of the Town of DeWitt reserves the right to direct the Commissioner of Development and Operations to revoke or rescind any building permits, certificates of occupancy or other permits or certificates issued in violation of this Local Law.

Section 5. No consideration of New Application

No applications for construction affected by this Local Law or for approvals for a site plan, variance, specific use permit, special use permit or other permits shall be considered by any board officer or agency of the Town while the moratorium imposed by this Local Law is in effect.

Section 6. Term

This moratorium imposed by this Local Law shall be in effect for a period of 180 days from the effective date of this local law. This moratorium may be extended for an additional period of not more than 180 days by the Town Board.

Section 7. Penalties

Any person, firm, corporation or other entity that shall take any action to establish, implement, place, or construct the process known as hydraulic fracturing and/or hydrofracking, including the establishment, implementation, placement or construction of any activity associated therewith or intending to support such process in violation of the provisions of this Local Law or shall otherwise violate any of the provisions of this Local Law shall be subject to:

A. Such penalties as may otherwise be provided by applicable local law, ordinances, rules or regulations of the Town for violations; and

B. Injunctive relief in favor of the Town to cease any and all such actions which conflict with this Local Law and, if necessary, to remove any construction or reconstruction that may have taken place in violation of this Local Law.

Section 8. Validity

The invalidity of any provision of this Local law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

Section 9. Hardship

A. Should any owner of property affected by this Local Law suffer an unnecessary hardship in the way of carrying out the strict letter of this Local Law, then the owner of said property may apply to the Town Board of the Town in writing for a variation from the strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary hardship shall not be mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special use permit, specific use permit, site plan or other permit during the period of the moratorium imposed by this Local Law.

B. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a variation of this Local Law, the Town Board shall, within thirty (30) days of receipt of said application, schedule a Public Hearing on said application upon five (5) days written notice in the official newspaper of the Town. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of said Public Hearing, render its decision either granting or denying the application for a variation from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary hardship if this Local Law is strictly applied to a particular property, then

the Town Board shall vary the application of this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.

Section 10. Definitions

A. The terms Hydraulic fracturing and/or Hydrofracking shall mean the process of recovering and/or developing natural gas trapped behind shale or rock and which generally is accomplished by a gas well that is drilled vertically into the ground and then horizontally from the well head, after which water, sand and/or chemicals are injected into the well the breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.

B. The term “Town” when used in this Local Law shall mean the Town of DeWitt.

C. The terms “Town Board”, “Planning Board” and “Zoning Board of Appeals when used in this Local Law shall refer to the appropriate boards established in the Town of DeWitt.

D. The term “Development and Operations” when used in this Local Law shall refer to the Department of Development and Operations of the Town of DeWitt as established by Local Law No. 1 of the year 1983 of the town of DeWitt and set forth in Chapter 15 of the Code of the Town of DeWitt.

11. Effective Date