

Local Law No. 1 of 2013

A local law extending the existing moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing” in the Town of Westerlo for an additional twelve (12) months.

Local Law No. 1 of 2013, entitled “Extension of the Gas Drilling Moratorium” to extend Local Law No. 2 of 2012 of the Town of Westerlo, the moratorium on applications, approvals or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing” in the Town of Westerlo, for an additional twelve (12) months.

Section 1. Title

This law shall be known as the Extension of the Gas Drilling Moratorium.

Section 2. Purpose and Intent

The Town Board of the Town of Westerlo (hereinafter referred to as “the Board”), in passing Local Law No. 2 of 2012, the Moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process known as “high volume hydraulic fracturing, acknowledged the controversy surrounding the process of high volume hydraulic fracturing (hereinafter referred to as “hydrofracking”). The Board recognized that the hydrofracking process and the related activities have generated controversies pertaining to the impact to the town’s water supply and roads, impact to the safety of residents due to the increased truck traffic, affect on property values, local economy and community character, and the implications to the residents’ quality of life.

The State of New York is currently engaged in an in depth evaluation of the hydrofracking process and its effect on the environment. No final determination has been made by the State as to how this process will be regulated. Consequently, municipalities that are geographically and topographically within the hydrofracking zone have undertaken in-depth evaluations to determine their approach to such potential activity.

The Town of Westerlo recognized that there was potential impact from hydrofracking, if the same was to be authorized and regulated by the State of New York, within its geographical borders. Given this potential for impact, the Town enacted Local Law #2 of 2012 of the Town of Westerlo, a moratorium on applications, approvals and/or drilling for natural gas, including but not limited to the process of hydrofracking, to provide it the time necessary to evaluate whether, and under what circumstances, the process of hydrofracking should be permitted in the Town of Westerlo. During the moratorium period, the Town formed a hydrofracking committee to assemble factual and scientific information regarding the hydrofracking process, and to report to the Board

with a recommendation regarding how to regulate land use with respect to gas drilling and, in particular, hydrofracking. The committee, which consisted of five members, met at least once per month, and as tasked, gathered information regarding the hydrofracking process and its effects on communities where these activities had been permitted. The Committee issued a lengthy (148 pages) report providing objective data regarding hydrofracking, its impact on the environment and its impact on the infrastructure and economy of the localities in which it was located.

The moratorium was intended to temporarily suspend administrative review, approval process and/or drilling activities associated with the production of natural gas on lands located in the Town of Westerlo in order to provide the Town adequate time to investigate and evaluate the issues involved with hydrofracking, and, depending on the State's final action, determine how any State regulation will affect the Town of Westerlo. The period of the moratorium, one year, was believed to be adequate to reconcile the scientific and engineering information regarding the hydrofracking process, and make any changes, if determined necessary and appropriate, to Local Law #1 of 1989, the Zoning Law of the Town of Westerlo.

The original moratorium period set forth in Local Law No. 2 of 2012 was used to conduct the initial evaluation of the hydrofracking process. The committee submitted its report to the Board in May 2013. The Board, after reviewing the report, determined that the report was not complete, and did not provide enough objective information from which the Board could make a determination as to whether modifications to the existing Zoning Law in the Town of Westerlo were necessary. Given that the Committee will need to continue to meet to hone the report, and provide the Board more thorough information on which it can base its decision, the Board is unable, at this time, to determine if the Town's current zoning law provides adequate guidance regarding possible applications for natural gas drilling within its geographical borders and/or whether the current zoning law should be amended to add a new Article to specifically address natural gas drilling, and particularly, hydrofracking, similar to the Board's passage of Article 17 of the zoning law to address Wireless Communication facilities. The current moratorium expires on August 29, 2013. The Committee will not have adequate time to conduct the additional research and study it has been tasked with by the Board and revise its Report to reflect the additional information. Further, given that it will not have a complete report, the Board will be unable to make any necessary amendments to the current Zoning Law to address land use controls relating to potential applications for natural gas drilling activities within the Town by said expiration of the

current moratorium. Consequently, in order to provide the necessary time to revise the Report and formulate a proposed amendment to the current zoning law, conduct the required public hearings, submit the proposal to Albany County Planning Board for review, and enact the final version, it is necessary to extend the existing moratorium for 12 months.

The extension of the moratorium applies to new and pending proposals or activities regarding gas drilling. The moratorium is enacted pursuant to the statutory powers vested in the Town of Westerlo to regulate and control land use and to protect the health, safety and welfare of its residents.

Section 3. Enactment

The Town of Westerlo hereby extends the current moratorium for twelve (12) months on the application for, approval of or actual drilling for or extraction of natural gas within any shale deposit located in the Town of Westerlo by the process commonly known as hydrofracking.

Section 4. Authority

The extension of the current moratorium is enacted by the Board pursuant to its authority to adopt local laws under the New York State Constitution, the New York State Town Law, and the Municipal Home Rule Law.

Section 5. Moratorium Imposed

For the period of twelve (12) months immediately following the effective date of this local law, there is a moratorium on all applications or activities on or under land that would have as the result the drilling for or extraction of natural gas within the Town of Westerlo from any shale deposit in the Town by the process known as hydrofracking.

This moratorium also applies to any activities with the Town, whether directly or indirectly associated with, that helps to and/or support, exploration, drilling for or extraction of natural gas and its associated support activities.

During the periods in which the moratorium is in effect, no approvals, permits, actions or decisions shall be made or issued by any Board or official of the Town of Westerlo with respect to any such applications for gas drilling. This moratorium shall apply to all such applications, whether pending or received prior to the effective date of this law. No such applications seeking approvals or permits for any such activities shall be accepted by any Board or official of the Town of Westerlo and no person, company, entity of any kind shall engage in such drilling activities for natural gas while this law remains in effect. Further, no person, corporation or other entity shall undertake any site preparation, including but not limited to clearing, grading, and filling, or construction

activities, with respect to any application, proposed land use, subdivision, or development that is subject to this moratorium.

Section 6. Enforcement

This local law shall be enforced by the Code Enforcement Officer of the Town of Westerlo or such other individual(s) as designated by the Board. It shall be the duty of the enforcement individual to advise the Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to such enforcement.

Section 7. Violations

Any person, firm, entity or corporation violating any of the provisions of this local law shall be guilty of an offense and upon conviction thereof, shall be subject to civil penalties in the amount of fifty thousand dollars (\$50,000.00) per day plus actual damage for each day such violation exists and/or an action for injunctive or equitable relief.

Section 8. Supersession

To the extent that this local law is inconsistent with any state statute or regulation, it is the intent of this law to supersede such statutes or regulations.

Section 9. Severability of Provisions

Should any section or provision of this local law be declared null, void voidable or invalid; such finding shall not affect the validity of the remaining portions of this local law.

Section 10. Effective date

This Local Law shall take effect immediately upon filing with the New York State Secretary of State's Office.