

A regular Meeting of the Town Board of Guilderland was held at the Town Hall, Route 20 McCormick's Corners, Guilderland, NY, on the above date at 7:30 pm. The meeting was opened with the Pledge of Allegiance to the flag. Roll call by Rosemary Centi, Town Clerk, showed the following to be present:

- Councilman Forte
- Councilwoman Slavick
- Councilman Pastore
- Councilman Maikels
- Supervisor Runion

ALSO PRESENT: Richard Sherwood, Town Attorney

Supervisor Runion welcomed everyone to the evening's meeting and asked for a motion accepting the minutes of the June 5th, 2012 Town Board meeting.

MOTION #103 Councilman Pastore moved to **APPROVE THE MINUTES OF THE JUNE 5th, 2012 TOWN BOARD MEETING.** Councilman Forte seconded the motion and it was carried by the following roll call vote:

- | | |
|----------------------|-----|
| Councilman Forte | Aye |
| Councilwoman Slavick | Aye |
| Councilman Pastore | Aye |
| Councilman Maikels | Aye |
| Supervisor Runion | Aye |

PUBLIC COMMENT PERIOD – NO PUBLIC COMMENT

PUBLIC HEARING:

7:30 PM – LOCAL LAW TO BAN HYDROFRACKING IN THE TOWN OF GUILDERLAND.

Town Clerk, Rosemary Centi, read the legal notice.

Legal Notice

Please be advised that the Town of Guilderland will hold a Public Hearing at the Town Hall, McCormack's Corners, Guilderland, N.Y on a proposed amendment to the zoning law to prohibit hydrofracking in the town of Guilderland on July 3, 2012, 7:30 PM.

All those wishing to be heard, will be heard.

Dated: May 15th, 2012

By Order of the Town Board of the Town of Guilderland

Rosemary Centi, RMC
Town Clerk

Supervisor Runion stated that this was a proposal that came through the Conservation Advisory Council.

John Wemple, Jr. Chairman of the Environmental Conservation Advisory Council read a statement regarding the issue. **(P 37A)**

The council voted unanimously against hydrofracking and presented the Town Supervisor with comments and recommendations.

Stephen Wickham, member of the Conservation Advisory Council read the following statement:

Thank you John. And thank you Mr. Supervisor and all of you on the Town Board for taking up the issue of Hydraulic Fracturing.

It is an issue that I believe threatens towns all across NY state in many ways

that go beyond just dramatic problems that occur when things go wrong.

I personally have been studying and working for a state-wide ban for over 3

years and last October attended a legal education workshop in Tully, NY, on

behalf of the Town of Guilderland as a member of the Guilderland Conservation Advisory Committee, to learn how towns could protect themselves from the impacts of new industries like hydraulic fracturing.

I also on my own time helped co-sponsor a repeat of this workshop last December here at the Guilderland Public Library and John Wemple, our Committee Chair, also attended that workshop.

Based on what I learned at the first workshop, I drew up a recommendation

for the Town that our Conservation Advisory Committee unanimously endorsed and which we delivered to Supervisor's office late last year.

So I am very glad to see the town taking action on this issue tonight.

There are 2 main things that I learned at those workshops:

1. The DEC plan is to issue a general SEQRA permits for the entire state but

it will require that the permit seeker show they are in compliance with all local zoning law and, most importantly, this town zoning must be in place before the permitting process begins.

As I understand it, if the town does not have any zoning laws, protected aquifers, or other special things then the General Permit will apply.

2. The other thing I learned at these workshops is that you want to make sure that as a town you take every precaution to make your laws bullet proof because the Gas Industry is playing hardball.

The proposal tonight actually goes beyond the recommendation that our committee offered. We suggested that the town implement a moratorium for 1 year or as appropriate and necessary until the Town's

Comprehensive

Plan, Land Use Regulations, Zoning Laws, Road Use Laws, and Preservation

Laws could all be adequately reviewed and updated.

And in our recommendation we compiled a list of resources for Advice and Counsel for creating and updating our Towns laws and regulations, some of

which are available to the town free of charge.

I personally have some concerns that the proposed language of this ban is not strong enough and may not protect the whole town. But I am not a lawyer or legal expert.

But if all of you are sufficiently satisfied with it, I would encourage you to vote for proposal and leave the door open to improve upon it in the future.

And if you are not sure, I would encourage you to pass a moratorium until you are sure we have the best possible language to protect our town's natural resources, un-natural assets such as our roads and emergency response services, and the overall quality of life everyone in Guilderland already enjoys.

Thank you very much for your time tonight and pre-emptive actions.

Steve Wickham

233 Executive Drive

Guilderland, NY 12084

Member of the Guilderland Conservation Advisory Committee

Ken DeStefanis, Van Auken Lane, thanked the Board for allowing comments on this important issue. He stated that it comes down to the fundamental issue of property rights, clean water rights and stable property values.

He further stated that it was critical that government protect these rights. He thanked the Town Board and residents working to protect property rights.

Earl Macintosh, West Old State Road, read a statement. (P 38A)

John Tabak, Knowles Terrace, stated the people want the benefits of natural gas without the risk. The decision about hydrofracking should be made by the experts. We should not take the resources and refuse to share in the risk.

Charles Klaer, Meadowdale Road stated that he strongly supported a ban on the extraction of natural gas and hydrofracking. He further stated that he did not feel that the language of the law was strong enough. He read the following statement:

I strongly support banning natural gas extraction, including hydrofracking within the borders of the Town of Guilderland.

I'm concerned that the proposed local law banning natural gas extraction may be inadequately comprehensive to successfully defend against a legal challenge.

I'm concerned that the proposed local law may also be interpreted to apply only to the Town's Industrial District. There are many documentaries showing gas drilling

towers elsewhere in the country within a distance of 1 1/2 times the height of a 75 foot drilling tower from residences, schools, and shopping centers. Guilderland's ban should be total.

I'm concerned that language similar to that in the proposed local law: ..." No permit issued by any state or federal agency, commission or board to any person, firm or corporation, which would violate the prohibitions of this Local Law shall be deemed valid within the Town of Guilderland." Is similar to language in the Town of Dryden local ordinance banning hydrofracking which was invalidated by the Appellate Division, Third Department.

The last section of the Town of Dryden ordinance states that "[n]o permit issued by any local, state or federal agency, commission or board for a use which would violate the prohibitions of this section or of this Ordinance shall be deemed valid within the Town." The court stated that: While the Town may regulate the use of land within its borders—even to the extent of banning operations related to production of oil or gas—it has no authority to invalidate a permit lawfully issued by another governmental entity[.] Moreover, by purporting to invalidate permits that may be issued by any state agency—including DEC—this provision related directly to regulation of the oil and gas industries and, accordingly, is expressly preempted by the OGSML. Thus, it is invalid.

The Town of Dryden's ban ordinance was passed and the Ordinance was sustained by the Appellate Division, Third Department even though 41% of the Town of Dryden's subsurface has been leased, 33% of the Dryden Village of Freeville has been leased, 13% of the Village of Dryden has been leased.

http://www.tompkins-co.org/tccog/gas_drilling/Focus_Groups/Mapping%20Minutes/Section%203%20-%20TC%20Mapping%20Analysis.pdf

There are lessons to be learned from at least 82 other Towns to totally ban the extraction of natural gas. Close to home, I direct the Town Board's attention to the difficult and comprehensive process the Rensselaer County Town of Nassau has gone through trying to totally ban mining within the Town.

According to the decisions related to the Matter of Troy Sand and Gravel Co., Inc v Town of Nassau currently before the Appellate Division, Third Department, "After passing successive moratoria on new mining applications, in 2008, respondent Town Board of the Town of Nassau passed an extensive zoning law that, among other things, permanently banned commercial excavation. The Town also adopted a comprehensive plan pursuant to Town Law § 272-a, establishing the Town's long-term land use goals and policies."

If you go to the Website for the Town of Nassau you'll find that they even documented their legal battle with Troy Sand and Gravel in their Comprehensive

Plan.

<http://townofnassau.org/content/Generic/View/24:field=documents;/content/Documents/File/1084.pdf> (Search using key word "Mining")

I'm persuaded that in addition to drafting a comprehensive Local Law that draws from the experience of the more than 82 towns that have banned fracking; many of which have already succeeded at the Appellate Division level, we need to update our Comprehensive Plan with language fully compatible with a total ban on the extraction of natural gas in all planning districts of the town, and ask the Zoning Review Committee to focus its current attention on townwide zoning banning the extraction of natural gas.

I'm concerned that there are a number of portions of the Comprehensive Plan that remain on the "implementation" agenda more than 10 years after the Comprehensive Plan was approved.

Are we willing to sacrifice the best tasting water in Albany County?

Many of these studies and their conclusions might appropriately be added to the Comprehensive Plan indirectly referenced perhaps in the local law.

[http://en.wikipedia.org/wiki/File:Normanskill_Watershed,_New_York_\(en\).svg](http://en.wikipedia.org/wiki/File:Normanskill_Watershed,_New_York_(en).svg)

<http://www.albanycounty.com/edcp/assets/pdf/normanskillreport/Normans-Kill-report.pdf>

http://www.cdrpc.org/Watervliet_Reservoir/Study.pdf

[http://www.albanycounty.com/uploadedFiles/Programs and Services/Health and Human Services/Quality of Life/Soil and Water Conservation/Programs/SWCD-AEM-Strategy.pdf](http://www.albanycounty.com/uploadedFiles/Programs_and_Services/Health_and_Human_Services/Quality_of_Life/Soil_and_Water_Conservation/Programs/SWCD-AEM-Strategy.pdf)

We may have to develop separate environmental "not here" criteria for each of the Town's Planning areas

http://www.townofguilderland.org/Pages/GuilderlandNY_Planning/ComprehensivePlan/Planningarea%20Map.pdf

There may be some vulnerability, if items on the Comprehensive Plan implementation plan have not been completed.

[http://www.townofguilderland.org/Pages/GuilderlandNY_Planning/ComprehensivePlan/Chapter 6 Implementation Action Plan.pdf](http://www.townofguilderland.org/Pages/GuilderlandNY_Planning/ComprehensivePlan/Chapter_6_Implementation_Action_Plan.pdf)

http://www.townofguilderland.org/Pages/GuilderlandNY_Planning/ComprehensivePlan/Final%20Generic%20Impact%20Environmental%20Stnt%20Section%20I.pdf

http://www.townofguilderland.org/Pages/GuilderlandNY_Planning/ComprehensivePlan/Final%20Generic%20Impact%20Environmental%20Stnt%20Section%20II.pdf

<http://shaleshock.org/drilling-101/>

He further stated that if our we are going to keep our law from being challenged successfully than we must do some more work on it, our zoning law and our comprehensive plan before we have frackers on our doorstep.

Chuck Klaer 829 Meadowdale Road, Altamont

Ed Downey, Foundry Road, stated that for the past four years he had been working in Chenango County on this issue. He stated that the law needs to address risk perception versus risk assessment. This issue was an incredibly complicated, scientifically driven issue. He further stated that the Board needed to understand the issues of private property rights and the right to lease or not to lease.

Banning something that is not illegal is not the way to go. Banning is telling the landowners that we know what is better for you than you do.

He stated that the Town should do a moratorium and that we were doing the citizens a disservice. He stated that he would like to see less government and to allow property owners to make their own decisions.

Don Reeb, Norwood Street, stated that there was no carefully done study on the social issue on hydrofracking. He further stated that until we know the cost, there should be no hydrofracking in the Town or in the State. If, and when, the studies are done, then we will know what the costs will be. Benefits are accrued to the property owners and the gas companies. (P 41A)

Susan St. Amore, Schoharie Plank Road, stated her concern that the quality of water would be compromised and that hydrofracking was just asking for trouble.

Gerry Houser, Pine Ridge Dr., stated that the law that is applied to the Catskills should be applied to our water source.

Betty Head, Lincoln Avenue, thanked the Board for having the meeting and stated that if we poison our water, we poison our right to live. (P 41B)

Cecilia Tkaczyk, Duanesburg resident, candidate for NYS State Senate, thanked the Board for holding the hearing putting forth the ban. She spoke about her concern for water use for hydrofracking. She also started her concerns for increase in traffic, air pollution, public services and emergency responders and law enforcement. She further stated that over 100 municipalities have banned hydrofracking. She called on Governor Cuomo to continue the moratorium on hydrofracking.

Hiram Eberlein, Veeder Lane, stated that he understood the point of view of the Town of Guilderland that there might be some interest in this. He further stated that along with property rights, water should also be considered a property right. He suggested that the law that has been presented may not be 100% and that even if it isn't; it should be passed, and after further study, amended later.

Susan Mosher, W. Highland Drive, congratulated the Town on its insight. She stated that we need to be comprehensive and cohesive in our approach. She further stated that the gas industry is incredibly powerful and if we don't have clean water, we don't have anything. She further stated that the bill should not only be in industrial zones and should be very comprehensive and cohesive.

MOTION #104 Councilman Pastore moved to CLOSE THE PUBLIC HEARING ON A LOCAL LAW TO BAN HYDROFRACKING IN THE TOWN OF GUILDERLAND.

Councilman Maikels seconded the motion and it was carried by the following roll call vote:

- Councilman Forte Aye
- Councilwoman Slavick Aye
- Councilman Pastore Aye
- Councilman Maikels Aye
- Supervisor Runion Aye

Supervisor Runion stated that he had received a letter from the Mayor of the Village of Altamont in support of the local law, a recommendation from the Town Planning Board and three additional letters from Town residents in support of the local law.

He stated that the Board had an environment assessment form that had been prepared with respect to the local law and the questions concerning the effect that this local law would have on the environment have all been answered in the negative.

MOTION #105 Councilman Maikels moved that BASED ON THE ENVIRONMENTAL ASSESSMENT FORM THE PASSAGE OF THE PROPOSED LOCAL LAW WOULD NOT HAVE A NEGATIVE EFFECT ON THE ENVIRONMENT. Councilwoman Slavick seconded the motion and it was carried by the following roll call vote:

- Councilman Forte Aye
- Councilwoman Slavick Aye
- Councilman Pastore Aye
- Councilman Maikels Aye
- Supervisor Runion Aye

Councilman Maikels stated that no laws are perfect but that the Town was taking the right step at the right time. The Board could not act for New York State, but they could act for the Town of Guilderland.

Councilman Pastore asked with the passage of the law, would there be any benefit to having a moratorium as opposed to the passage of the law with respect to attacks to the proposed law?

Supervisor Runion stated that all he would add is that in a number of cases where the State intended to “occupy” the field and adopt there own legislation or regulation, if there has been a law of the locality that is more stringent than that of the State, then they have allowed the local law to stand. By having a local law in place, the State may say that because we have taken some sort of local action, than ours would be valid. A moratorium would not help the Town. Either you take a stand or you have a moratorium in order to study the issue that could go no where. He stated that you either ban it or not.

Supervisor Runion stated that the use of the law had to go into a specific zoning classification. Within the Industrial District there were a number of banned uses in the Town that is why it was placed in that district. The Town could adopt this legislation and let the Zoning Review Committee tweak it. It would give the Committee some guidance as to the Board’s feeling on the issue.

MOTION #106 Councilman Maikels moved to ADOPT LOCAL LAW #4 FOR THE TOWN OF GUILDERLAND TO AMEND ARTICLE III, SECTION 280-23 C OF LOCAL LAW NO. 3 OF 1987 ENTITLED “TOWN OF GUILDERLAND ZONING LAW OF 1987”.

Councilwoman Slavick seconded the motion and it was carried by the following roll call vote:

Councilman Forte Aye – said, “I just want to say that although it is a new science, I do not want the government interfering with my rights as a property owner as much as anybody else does, until this science can safeguard 100% that my kids’ water supply will be good, I have to vote in favor of this”.

Councilwoman Slavick Aye –said, “I would like to thank all the residents who spoke, you gave a lot of good input. I would like to thank the residents who sent in letters and to the Conservation Advisory Council who brought this forward. We heard many different viewpoints tonight. It is a very complicated issue. We heard an economic view from Dr. Reeb about the cost. However, the common theme I heard was water. One person stated that if you poison our water you poison our lives. I heard another person speak about if you want to take a shower you want to make sure it is unpolluted water.

I just want to reiterate what I heard from you as well as what I was reading about environmental impacts of this hydrofracking. The first is the contamination of our ground water and many of our residents depend on ground water as their primary water source, the second thing is the risk to air quality, the third is migration of gases and hydraulic fracturing chemicals to the surface and the fourth is surface contamination from spills. All of these affect the health of our residents so I am voting in favor.

Councilman Pastore – “I am in favor of the proposed local law. I think, in certainly asking some questions to you Mr. Supervisor about the potential future challenge of a law that has been approved, I guess that certainly exists. That’s why I asked the question if this board is in fact in favor of preventing hydrofracking, whether if it would be more beneficial, at least in a temporary light, of pursuing a moratorium versus legislating a law outright prohibiting it. Certainly, the environmental effects of hydrofracking seem and loom large, and while there may be a competing interest against that as proposed by certain opponents of hydrofracking, and that being most particularly preservation and protection of their own property rights, I think that we have to err on the side, if one were to consider it an error, certainly lean on the side of protecting our water supply and preserving the health, welfare and benefit of our residents. I certainly would like some further review and investigation be done by the members of our Zoning Review Committee. Perhaps as the Supervisor suggests, to tweak the law. They probably could provide their own insight and expertise in areas where the Town Board might not necessarily envision. I also wonder if, whether there has to be any review of or Comprehensive Plan in any way to incorporate or at least to highlight this proposed law and what we view from a more global perspective of the Town.

Councilman Maikels - “I am also in favor. I want to thank everybody who came out tonight and gave us their input and people who sent us emails and articles. I think that this is the environment that we live in and I am always in favor of protecting it”.

Supervisor Runion - “I am going to vote in favor as well. I would like to thank the Conservation Advisory Committee who first brought the issue of hydrofracking to us in a very well reasoned manner. All of our zoning laws affect property rights. When we tell someone that they can’t put a shed within 15’ of the property line we are affecting someone’s property rights. I can’t put a shopping center on my residential piece of property and no one else can, and again, that is affecting property rights. So to use property rights as an argument to defeat a local law which would ban hydrofracking, I think, is misplaced. We are here as a Town Board and it is our charge to protect the health, safety, and welfare of the residents of the Town of Guilderland. We would not be, I don’t think, living up

to our charge if we allowed some activity such as hydrofracking, which had any potential to affect the Guilderland water supply or the water supply of a lot of our residents who are living with private wells. So, I am in favor of the law, and I think that we will refer it over to the Zoning review committee and to take a look at 100 or so local laws that have been adopted in the State of New York particularly those laws that have passed and to take a look at the commas as former Councilman Downey referred, just to make sure that everything is right up to snuff in case there is some sort of challenge. I want to thank all of you who came this evening and spoke both in favor and against the law. I think it was a good discussion and was conducted in a very reasonable manner. Thank you.

AGENDA ITEMS:

Item #1 on the agenda was to re-consider the request of State Farm Utility for project management fee in regard to sewer improvements. State Farm sent a letter explaining why they were entitled to the fee.

MOTION #107 Councilwoman Slavick moved to **APPROVE THE REQUEST OF STATE FARM UTILITY FOR PROJECT MANAGEMENT FEE IN REGARD TO SEWER IMPROVEMENTS.** Councilman Forte seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #108 Councilman Forte moved to **APPROVE THE TITLE CHANGE FOR MARIA DAVIS FROM CLERK I TO CLERK II AS RECOMMENDED BY THE SUPERINTENDENT OF WATER AND WASTEWATER MANAGEMENT.**

Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #109 Councilman Pastore moved to **ACCEPT AUDIT, FINDINGS, AND RECOMMENDATIONS OF THE TOWN COMPTROLLER IN REGARD TO THE TOWN OF GUILDERLAND JUSTICE COURT.** Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #110 Councilwoman Slavick moved to **ESTABLISH THE STANDARD WORKDAY FOR TOWN BOARD MEMBER, ALLEN MAIKELS, PLANNING BOARD MEMBER, HERBERT HENNINGS, AND ALTERNATE ZONING BOARD MEMBER, NICOLE VENTRESCA-COHEN AS REQUIRED BY THE NEW YORK**

STATE COMPTROLLER. Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #111 Councilman Pastore moved to **AWARD BIDS FOR THE DILLENBECK SEWER REHAB/OLD STATE ROAD PROJECT TO ANJO CONSTRUCTION; \$270,212.00, BRUNSWICK ELECTRIC; \$54,533.00, AND J SQUARED; \$394,000.00.**

Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #112 Councilwoman Slavick moved to **APPROVE TRANSFERS AS RECOMMENDED BY THE TOWN COMPTROLLER, JEAN STERLING.**

Councilman Forte seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #113 Councilman Pastore moved to **APPROVE A 500' RIGHT OF WAY, PRIVATE LANE, ROUTE 146 ALTAMONT, NAMED ARDEN WAY.** Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #114 Councilman Pastore moved to **ENTER INTO EXECUTIVE SESSION ON A PERSONNEL MATTER AT 9:13 PM.** Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #115 Councilman Pastore moved to **APPROVE THE CONTRACT BETWEEN THE TOWN OF GUILDERLAND AND THE GUILDERLAND PBA SUBJECT TO APPLICABLE CIVIL RIGHTS LAW PROVISIONS. CONTRACT DATED JUNE 14, 2012.** Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
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Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #116 Councilwoman Slavick moved to **EXIT EXECUTIVE SESSION AT 10:02 PM.** Councilman Maikels seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

MOTION #117 Councilwoman Slavick moved to **ADJOURN THE JULY 3, 2012 TOWN BOARD MEETING AT 10:05 PM.** Councilman Pastore seconded the motion and it was carried by the following roll call vote:

Councilman Forte	Aye
Councilwoman Slavick	Aye
Councilman Pastore	Aye
Councilman Maikels	Aye
Supervisor Runion	Aye

Respectfully submitted,

Rosemary Centi, Town Clerk