

Regular Meeting  
October 3, 2012

The regular meeting of the Town Board of the Town of Homer held on Wednesday, October 3, 2012, in the Senior Center at the Town Hall Building was called to order by Supervisor Frederick J. Forbes at 7:00 p.m.

PRESENT

Frederick J. Forbes, Supervisor  
Barry E. Warren, Councilman  
Dan A. Weddle, Councilman  
Kevin M. Williams, Councilman  
Brian D. Young, Councilman  
Patrick M. Snyder, Attorney for the Town  
John R. Phelps, Highway Superintendent  
Anita W. Jebbett, Town Clerk

OTHERS PRESENT

Gary Smith, Executive Director, MICAH  
Donald Ferris, reporter, The Homer News  
Sarah Bullock, reporter, Cortland Standard  
Approximately 20 interested citizens (see attached)

Supervisor Forbes led those present in the pledge of allegiance.

MINUTES

**The minutes of the September 5<sup>th</sup> public hearing and regular meeting were approved as presented,** on motion by Councilman Warren, seconded by Councilman Young and carried unanimously.

MONTHLY REPORTS

Presented for audit by the Board were:

1. The Town Clerk's report of all cash receipts and disbursements for September.
2. The Supervisor's report of all cash receipts and disbursements for August.
3. The Code Officer's report of all building permits issued for September.

BILLS TO BE PAID

General bills were approved as audited on motion by Councilman Warren, seconded by Councilman Young and carried unanimously: **RESOLVED: that General vouchers #224 through #249 totaling \$15,109.27 be approved for payment.**

Highway bills were approved as audited on motion by Councilman Williams, seconded by Councilman Weddle and carried unanimously: **RESOLVED: that Highway vouchers #146 through #162 totaling \$28,461.14 be approved for payment.**

OLD BUSINESS

Farmland protection plan – On motion by Councilman Young, seconded by Councilman Weddle and carried unanimously: **RESOLVED: that the Town Board hereby declares that the public comment period for the proposed Farmland Protection Plan is closed, and that the plan now be sent to the New York State Department of Agriculture & Markets for their review and approval.**

Supervisor Forbes thanked Councilmen Weddle and Young for approximately four years of work to develop the plan. The farmland protection plan will apply to the Towns of Preble and Scott as well as Homer. Forbes explained that this was done to save money for all three towns.

NYS audit CAP letter – A corrective action plan (CAP) in response to the recent State audit was signed by the Town Board members.

Thank you letter for Planning Board Chairman – Supervisor Forbes reported that he has written a thank-you letter to Planning Board Chairman Richard Crane who resigned as of September 1<sup>st</sup>. Crane had served as Chairman for almost 30 years.

Disposition of old records – On motion by Councilman Weddle, seconded by Councilman Warren and carried unanimously: **RESOLVED: that Records Management Officer Jebbett is hereby authorized to dispose of the listed records (attached) that, in accordance with the rules of the New York State Archives, are eligible for disposal.**

Tentative budget for 2013 - Supervisor Forbes handed out copies of the tentative budget. A budget workshop was scheduled for Wednesday, October 24<sup>th</sup> at 7:00 p.m.

Proposed Village surcharge on fines – There was no opposition by the Town Board to the Village looking into adding surcharges.

Route 281 bridge project – Supervisor Forbes reported that New York State will start replacing the bridge on Route 281 at Cold Brook on November 7<sup>th</sup>. The State is hopeful that the project will be complete by Christmas.

## HYDRO-FRACKING ISSUE

Victor Furman, Director of the Joint Landowners Coalition of New York, introduced himself and spoke about the potential financial benefits of gas drilling. He reported on the recent State Supreme Court decision which ruled the City of Binghamton's hydro-fracking moratorium invalid.

There was some discussion about the City of Binghamton decision with Gary Smith, Director of MICAH. Smith stated that the wording of the decision upheld the arguments by judges in the Towns of Dryden and Middlefield cases which both banned hydro-fracking.

Charles Wheeler, resident of Cosmos Heights, spoke about his concerns - that hydro-fracking may cause well water to become contaminated, that unintended consequences may include earthquakes if unknown fault lines are involved, and about the large amount of water used during the process.

Rich Damianos, owner of Tallmadge Tire, Cortland, spoke about his experiences providing tire and wheel services for the well-drilling operations in Pennsylvania. He said that he has had extensive experience dealing with major airports and large businesses and has never dealt with any business more dedicated to safety than the well-drilling operations. In his experience and that of his employees, the well sites are impeccably maintained and vehicle safety is a top priority. He explained how he has added to his business and hired more employees due to the gas drilling.

Roy Crandall, resident of South Main Street, said that he does not know anything about hydro-fracking, but neither does any one else in the room. He suggested that the Town Board needs to speak with those municipalities who have had experience with drilling.

Bruce Crandall, resident of Route 90, explained that he has been involved through his work with the gas-drilling operations in Pennsylvania. He said the financial benefits of drilling can not be ignored. He suggested that the Town and others must rely on the NYS Department of Environmental Conservation to complete their review and establish the necessary regulations, a process that taxpayers are funding. Crandall stated that if hydro-fracking is done properly in New York State, everyone in the state will benefit.

Paul Whittaker, from Greene, said that the State has already spent more than \$20 million studying the issue and that the Town needs to let the DEC do their job.

There was much more discussion with many present urging the Town to adopt a moratorium. Gary Smith emphasized that the Town needs more time to address questions.

Dairy farmer Stuart Young explained how he had signed a lease before anyone had ever heard of hydro-fracking and a moratorium would prolong that lease instead of letting it expire on time.

Anthony Caravella, resident of North Main Street, disagreed that the Town should leave it up to the State. He said that the community should be able to decide for itself whether it would be good for Homer.

Dan Quinlan, resident of Route 41, and Suit-Kote employee, said that there was no need for a moratorium. He had witnessed the early days of gas drilling in Pennsylvania and said that things are now done much better. New York State has learned from Pennsylvania's experience and Quinlan trusts them to establish the necessary rules and regulations. He said that the Town Board has done a pretty good job of running the Town so far and he would trust them to make a good decision.

Paul Suits, resident of Suits Avenue, and President of Suit-Kote Corporation, said that there is passion on both sides of the issue, but in his experience in Pennsylvania the gas drilling industry has been very tough on safety measures.

Dennis Underwood, resident of East River Road, and a dairy farmer, said that from his experiences on the farm, the DEC enforces very stringent rules.

Supervisor Forbes said that everyone in the room had had their opportunity to speak their mind and thanked them for their comments.

## NEW BUSINESS

Appointment to Zoning Advisory Committee – On motion by Supervisor Forbes, seconded by Councilman Young and carried unanimously: **RESOLVED: that Gordon Wheelock is hereby appointed to take the place of Fred Forbes on the Zoning Advisory Committee.**

Tentative budget for 2013 – On motion by Councilman Young, seconded by Councilman Warren and carried unanimously: **RESOLVED: that the tentative budget as proposed by Supervisor Forbes is hereby adopted as the preliminary budget of the Town for 2013, with the tax rates to be the same as in 2012 - \$1.28 per thousand for Village residents and \$1.70 per thousand for Town residents (which includes \$.42 fire district tax).**

## ATTORNEY FOR THE TOWN

Attorney Snyder reviewed the status of litigation concerning the assessment of the Donald L. Barber Funeral Home, Inc. The funeral home's attorney has submitted an offer to settle the dispute without providing any of the requested information. It was the consensus of the Town Board that the offer not be accepted.

## PROPOSED MORATORIUM ON HYDRO-FRACKING

Attorney Snyder submitted to the Board copies of the proposed moratorium on natural gas drilling. Supervisor Forbes said in light of the recent State Supreme Court decision involving the moratorium for the City of Binghamton, he was concerned about a possible lawsuit if they were to adopt a moratorium.

On this subject, Councilman Williams made the following statement:

Whereas I appreciate hearing comments from the public, noting Mr. Caravella, Mr. Wheeler, Mr. Young, and Mr. Crandall, your comments provided me with further information on this subject. I have a copy of the Lebus decision in the matter of Elvin Jeffrey, Vestal Gas Coalition, et al, v Matthew T. Ryan, Mayor, City Of Binghamton (Index CA2012-001254, dated 10/02/2012), and have spent most of last night going through it. The Lebus decision has great bearing on this Board's decision on whether to enact a moratorium. In the Judge Lebus decision, Page 12, Paragraph 2, in order for a moratorium to be properly enacted "the municipality must show that its actions were:

- 1) *In response to a dire necessity;*
- 2) *Reasonably calculated to alleviate or prevent a crisis condition , and*
- 3) *That the municipality is presently taking steps to rectify the problem. “*

Page 14, paragraph 2, states, “*There can be no showing of dire need since the New York State Department of Environmental Conservation has not yet published the new regulations that are required before any natural gas exploration or drilling can occur in this state. Since there are no regulations, no permits are being granted. Second, since the DEC is not yet issuing permits, there is also no crisis nor a crisis condition that could possibly be shown by the City at this time.*”

The Town Board has created a Committee to look at possible regulations in the future, and does in fact meet the third criteria above.

According to my research and in speaking with constituents I have learned that:

1) Many gas leases have contract language which essentially allows the Lessee to suspend payments to Lessor for the term of a moratorium;

2) Or to extend the term of the lease beyond the end date for as long as the moratorium is in effect. This is detrimental to those landowners who may want to use their land in a different way.

3) I’m also noting that I have spoken to people who currently have leases who now do not want the hydraulic fracturing process potential on their land and do not want it any longer than the contract states.

**A moratorium enacted by this board would unduly interfere with the lawful privately executed contracts between two parties, and the unintended consequences serve to hurt all parties, and not have any effect on preventing a crisis condition, at this time.**

The Lebus decision also states on Page 11, Pre- Emption, (paraphrased), that the court adopts the reasoning in the Rumsey (Town of Dryden) and Cerio (Town of Middlefield) decisions and that Environmental Conservation Law (ECL 23-0303(2)) does not supersede local zoning laws regarding the municipality’s right to regulate the use of their lands within their jurisdiction, although there is an appeal pending on whether ECL 23-0303(2) supersedes local zoning.

Notwithstanding this appeal, the Town should keep the Zoning Advisory Committee in action and re - charge the Committee with the task to produce recommendations for possible zoning changes that will meet the Board’s responsibility to its constituents.

Referring to his above statement, Councilman Williams made a motion, seconded by Councilman Young and carried unanimously: **RESOLVED: that the draft moratorium be received and filed, and that the Zoning Advisory Committee be re-charged with continuing its work to produce recommendations to the Town Board for possible zoning changes.**

## HIGHWAY SUPERINTENDENT

Highway Superintendent Phelps reported that he and his crew have been busy preparing for the upcoming winter weather. The Town has saved money due to the sand/salt mixture left over from the previous year. Phelps reported that the Town is set to purchase a used truck from the Town of Cazenovia in 2013. They will be sealing and finishing Marion Drive next week.

The Highway crew will be installing a new curb and re-paving the parking area along the south side of the Town Hall next week, depending on the weather.

Councilman Warren showed Board members a plan from Valley View Gardens for landscaping along the south side where sidewalks were removed. Their bid price may be lowered due to work done by the Highway crew.

On motion by Supervisor Forbes, seconded by Councilman Young and carried unanimously: **RESOLVED: that the Town Board accepts the landscaping proposal of Valley View Gardens for the amount of \$2,250.00 or less for the south side of the Town Hall.**

The meeting was adjourned at 9:15 p.m.

Anita W. Jebbett  
Town Clerk