

TOWN OF MARCELLUS
TOWN BOARD MEETING MINUTES
July 11, 2011

A regular meeting of the Town Board of the Town of Marcellus, County of Onondaga, State of New York was held on Monday, July 11, 2011 at 7:00 PM in the Town Hall, 24 East Main Street, Marcellus, New York. Those present were:

Daniel J. Ross, Supervisor
James A. Sheridan, Councilor
Thomas C. Lathrop, Councilor
Kevin F. O'Hara, Councilor

Donald G. Sherman, Councilor was absent

Also present: Sandy Taylor, Deputy Town Clerk; Jim Gascon, Counsel; Tracie Barnes, Bookkeeper; Donald MacLachlan, Highway Superintendent; Phil Coccia, Recreation Leader; David Card, Steven Wheeler, John Rossiter, Jeff Berwald, John Calley, Peg Kronen, John Scanlon, Larry Abrahamson,

Supervisor Ross opened the meeting at 7:00 pm with the Pledge of Allegiance to the Flag.

PUBLIC HEARING: LOCAL LAW IMPOSING A MORATORIUM LAW HYDRAULIC FRACTURING AND/OR HYDROFRACKING IN THE TOWN OF MARCELLUS.

Supervisor Ross opened the Public Hearing for the proposed Local Law Imposing a Moratorium Law Hydraulic Fracturing and Hydrofracking as Adopted by Local Law B of 2011. This law would be in effect for 6 months from date of approval. This is the Second Moratorium for this issue.

Supervisor Ross asked for anyone who wished to speak in favor or against the proposed Local Law to please state his or her name and address for the record. Peg Kronen, 2728 Otisco Valley Road, spoke in favor of the moratorium.

Hearing no other comments from the floor, Mr. Ross asked the Board if they had any comments.

With no comments from the Board, Mr. Ross closed the public hearing on the proposed Local Law at 7:05.

Copies of the minutes of the Town Board Meeting held on June 13, 2011, Special Town Board Meeting held on June 23, 2011 and Workshop Meeting held on June 23, 2011 was given to Board Members. Councilor Sheridan made a motion to approve the minutes and Councilor O'Hara seconded. Tracie Barnes made a correction to last month's voucher numbers. The numbers should be 201100376-201100445. Councilor Sheridan made a motion to approve the amended minutes from last month and Councilor O'Hara seconded. All voted aye. Carried.

The Abstract of Audited Vouchers was given to the Board Members as submitted by the Town Clerk, Abstract #7 as of July 8, 2011, Claims # 201100446 – 201100514 and Highway Claims # 201100122 – 201100138. Councilor Sheridan had a few questions about some AT & T bills that were answered by Supervisor Ross.

	<u>Expenses</u>
General Fund (A)	\$102,018.17
General Fund – Part Town	421.27
Highway – Town Wide	4,042.13
Highway – Part Town	9,659.88
Ambulance Fund	62,263.75
Sewer District	14,766.21

Bills paid between meetings:

AFLAC – June Premium	N/A	248.64
Excellus BCBS (July Retiree Insurance)	N/A	2,200.69
Excellus BCBS (July Insurance Premium – Employees	N/A	17,694.44
Simply Prescriptions (July Prescription Coverage – Retirees)	N/A	1,026.18

Board Members were given copies of the Activity Report as of June 2011 and monthly Statement of bank balance as of July 11, 2011.

	<u>Total Revenue</u>	<u>Total Expense</u>
General Fund	\$1,107,340.58	\$ 494,006.29
General Fund – Part Town	108,849.02	44,511.39
Highway – Town Wide	477,316.59	295,010.23
Highway – Part Town	314,274.12	98,843.80
Enterprise Fund	2.73	1,823.47

Councilor Lathrop made a motion seconded by Councilor Sheridan to approve and pay the bills, approve the monthly activity report as of June 2011 and the monthly statement of bank balances as of July 11, 2011. All voted aye. Carried.

OLD BUSINESS:

Report from Department Liaisons: There were no reports from the Departments. Mr. Ross received a booklet on the Patterns of Government in Onondaga County. It explains the structures and services of the County, City, Town and Village Governments. He will leave it at the Town Hall if anyone would like to look at it.

This Friday at 9:00 am the County Comptroller and his representatives are coming to the Town Hall to go over the village sewer contract. Anyone wishing to come is invited.

Mr. Reagan has requested a liaison for his department. Councilor Sheridan has volunteered to be the liaison for Mr. Reagan for the next three months.

Town Hall: Replace Railing and Paint Exterior: Mr. Ross is waiting for an estimate from Gallagher Painting. The painting is going to be tabled until we receive all the estimates.

Railings: There was talk at the workshop about building a porch on the front of the building. We will investigate that idea a little longer once we get some estimates. Something has to be done as the stairs are unsafe.

Councilor O'Hara made a motion to replace the railing on the side of the building for \$2,646.00. The bid came from Homer Iron Works. This was seconded by Councilor Lathrop. All voted aye. Carried.

New Business:

Recreation Agreements: Summer Concert (Smokn'), Orenda Springs (Horse & Adventure Camp), Zumba. Councilor Sheridan made a motion seconded by Councilor Lathrop to authorize the Supervisor to enter into the following agreements for the Marcellus Recreation:

Orenda Springs (Horse & Adventure Camp)	Sept. 5 - 8	\$100/student
Summer Concert (Smokn')	July 7	\$600.00
Zumba Fitness Class (Tues and/or Thurs)	June 28 – Sept. 1	\$40/1 day/week \$70/2 days/week

All voted aye. Carried.

Amendment to the Memorandum of Agreement for the Central New York Stormwater Coalition: This Stormwater Coalition is formed from all the MS4's in the county. This is a continuing contract we are entered into for a development of a coalition. There is no charge to us to be a part of the coalition. Councilor O'Hara made a motion to approve The Memorandum of Agreement, which Mr. Gascon has reviewed, with a second by Councilor Sheridan. All voted aye. Carried.

Marcellus Fire Department: Service Award Program: A request was made from the Fire Department to have a Public Referendum and Public Hearing on this proposal. Hearing no motion from the Board, the Board will not take any action at this time.

Adopt Local Law Imposing a Moratorium Law Hydraulic Fracturing and /or Hydrofracking in the Town of Marcellus:

#007-11
TOWN BOARD RESOLUTION
TOWN OF MARCELLUS

At a regular meeting of the Town Board of the Town of Marcellus, held at the Town Hall, 24 East Main Street, in said Town, County of Onondaga, State of New York on July 11, 2011, at 7:00 P.M., there were:

PRESENT:	Daniel J. Ross	Supervisor
	James A. Sheridan	Councilor
	Donald G. Sherman	Absent
	Thomas C. Lathrop	Councilor
	Kevin O'Hara	Councilor

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, a proposed local law titled Local Law No. B-2011, "A Local Law Imposing a Moratorium on Hydraulic Fracturing and/or Hydrofracking in the Town of Marcellus," was presented and introduced at a special meeting of the Town Board of the Town of Marcellus held on June 23, 2011; and

WHEREAS, a public hearing was held on such proposed local law on the 11th day of July, 2011 by the Town Board of the Town of Marcellus and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Marcellus in its final form in the manner required by Section 20 of the Municipal Home Rule Law of the State of New York; and

WHEREAS, the New York State Environmental Quality Review (SEQR) process for this action was completed by this Board at its June 23, 2011 meeting, this Board, having determined no other agency has the legal authority or jurisdiction to approve or directly undertake the enactment of a local law in the Town of Marcellus, such that there are no other involved agencies within the meaning of SEQR, assumed lead agency status and determined this to be a Type II action with no significant adverse effect; and

WHEREAS, it is in the public's interest to enact said proposed Local Law No. B-2011.

NOW, upon the Motion of Councilman O'Hara and seconded by Councilman Sheridan,

IT IS HEREBY RESOLVED, that the Town Board of the Town of Marcellus, Onondaga County, New York, does hereby enact proposed Local Law No. B-2011 as Local Law No. 2 of 2011 as follows:

**TOWN OF MARCELLUS
LOCAL LAW NO. 2 of 2011**

**A LOCAL LAW IMPOSING AMORATORIUM ON
HYDRAULIC FRACTURING AND/OR HYDROFRACTURING
IN THE TOWN OF MARCELLUS**

Be it enacted by the Town Board of the Town of Marcellus as follows:

Section 1. TITLE

This law will be known as the 2011 Moratorium on Hydraulic Fracturing and/or Hydrofracturing in the Town of Marcellus.

Section 2. LEGISLATIVE INTENT

- A. The Town Board of the Town of Marcellus, Onondaga County, State of New York, is vested by the State of New York to regulate and control land use within the Town of Marcellus and to protect the health, safety and welfare of its residents. The issue of hydrofracturing has generated much concern about the safety and reliability of this method to recover and develop natural gas. The Town Board believes that based on these concerns, additional study and examination of necessary land use regulations relating to hydrofracturing is warranted. Therefore, the Town Board, through this local law, declares a six month moratorium on any activity or processes associated with hydrofracturing or in furtherance of hydrofracturing, including the establishment, implementation, place and construction of hydrofracturing processes or activities in the Town of Marcellus.
- B. The Town Board is well aware of the current review of hydrofracturing by the New York State Department of Environmental Conservation (DEC), including an assessment of the various potential environmental impacts of hydrofracturing, state regulations currently in place and the potential for additional regulations of hydrofracturing at the state level. This moratorium period will allow for the review and determination of the need for additional state regulations which will necessarily impact the role of the Town in further regulation on a local level.
- C. This moratorium is also intended to allow necessary time for the Town Board to examine whether additional local regulation is necessary, the extent of such regulation, and if such local regulation is necessary, the Town Board may determine the appropriate rules and regulations to ensure comprehensive uniformity, fairness and consistency in such regulations, Further, the Town Board will utilize the moratorium period to further examine the significant environmental issues relating to hydrofracturing.
- D. The Town Board recognizes the importance of finding and developing other sources of natural gas for energy resources and believes that natural gas may be a cleaner and more beneficial source of energy than other oil and gas consumption. Natural gas development has existed in New York State since approximately 1821. There are vast amounts of natural gas in reserves of shale deposits and new technology has made it more economical to produce natural gas from shale deposits. There have been studies

indicating that natural gas production using the hydrofracking method could be a significant benefit to economic activity.

- E. However, the Town is also concerned with the potential for damage to groundwater quality and quantity, potential for sediment and erosion and the use of naturally occurring radioactive materials. Hydrofracking requires the use of large amounts of water, including the use of surface water (rivers, basins, lakes), private ponds, groundwater, municipal water, waste water and produced water. Further, the use of hydrofracking will create more demand for commercial waste water treatment facilities to dispose of produced water. The Town Board is concerned with the potential for groundwater pollution, affecting many water wells in the town. There may also be further impacts to local roads during the construction and use of any potential well. Lastly, the Town is concerned with the potential environmental impacts on water quality, agricultural land uses, wetlands, Otisco Lake, which is the primary source of water for the Town of Marcellus and other local municipalities, and the lake watershed.
- F. The Town of Marcellus has legitimate goals and aims to protect the community, cultural, historical, recreational and environmental resources with the Town and the Town Board believes that studying this issue is necessary so that hydrofracking operations are regulated to protect the town's predominant residential and agricultural land uses and to protect the environment from potential negative impacts.
- G. The Town of Marcellus does hereby find a moratorium of six months duration is necessary and reasonable in order to afford the Town Board an opportunity to refer this issue to the Code Enforcement Officer, Town Planning Board, Town Zoning Board of Appeals and the Town Planning and Zoning Committee for consideration and study and to afford such boards an opportunity to make recommendations to the Town Board regarding appropriate amendments to Chapter 148 of the Town Code. A moratorium of six months will prevent the establishment of hydrofracking facilities and operations that may be contrary to any land use regulations ultimately adopted thus making the new regulations a nullity. The health, safety and general welfare of the residents will be protected by the adoption of the moratorium pending the issuance of final regulations by the Town of Marcellus.

Section 3. DEFINITIONS

HYDRAULIC FRACTURING OR HYDROFRACKING—For purposes of this Local Law, the term “hydraulic fracturing” 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 breaking and/or fracturing of shale and/or other natural structures under the ground intending to release natural gas from the ground.

PERSON – For the purposes of this local law, the term “person” shall include an individual, society, club, firm, partnership, joint venture, corporation, or the association of persons, and the singular shall include the plural number.

Section 4. SCOPE AND CONTROL

- A. For the period of six months following the effective date of this local law, no new hydrofracking facilities or operations, as defined by this local law, or expansions beyond existing operations or facilities shall be permitted by any person in the Town of Marcellus.
- B. During the effective period of this Local Law:
 - 1. The Town Planning Board shall not consider and/or approve any site plan, approve any special use permit or other permit which would have as a result of the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Town.
 - 2. The Town Zoning Board of Appeals shall not consider and/or grant any variance, special use permit or other permit for any use which would result in the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Town.
 - 3. The Codes Enforcement Officer of the Town shall not consider and/or issue any building permit or other permit which would result in the establishment, implementation, placement, construction or development of any new hydrofracking facility or operation, including any activity associated therewith or in furtherance of hydrofracking, or the enlargement of any existing hydrofracking facility or operation within the Town.
- C. If, within six months, the Town Board adopts a local law relating to hydrofracking, then, in that event the moratorium imposed by this local law shall expire immediately on the date the Town local law relating to hydrofracking takes effect in accordance with Section 27 of the Municipal Home Rule Law.

Section 5. EXCEPTIONS.

The lawful use of any premises on the effective date of this local law operated under a permit issued by the Town of Marcellus or other appropriate state or federal agency may be continued, provided that such use shall not be enlarged or extended beyond the existing location and operation.

Section 6. VARIANCES.

- A. The Town Board reserves to itself the power and sole discretion to vary or adapt the strict application of the requirements of this Local Law in the case of unusual hardship or circumstances that would deprive the owner of the reasonable use of the lands involved, provided the application is consistent with the intent of this Local Law.
- B. An application for a variance plus 7 copies thereof shall be filed with the Town Clerk, together with a filing fee of \$250.00. The application shall specifically identify the land involved, recite the nature of the proposed use of the land, provide a narrative description of the project and identify the circumstances pursuant to which the variance is sought and the reasons why the variance is claimed. Any costs, including expert consulting fees, incurred by the Town shall be paid by the Applicant immediately upon request or the application may be denied.
- C. The Town Board may refer any applications for a variance herein to the Planning Board, the Zoning Board of Appeals, and/or its retaining consultant, for their advice and recommendations, but all decisions on granting or denying such variances shall be made by the Town Board solely, after determining whether or not the requested variance is compatible with the Comprehensive Plan of the Town, the Town Code and any contemplated amendments to the Zoning Law. Unless completely satisfied that the proposed variance is compatible, the Town Board shall deny the application.
- D. The Town Board shall conduct a public hearing on any request for a variance within forty-five (45) days of receipt of a completed application; and shall issue its final decision on requests for a variance within thirty (30) days from the public hearing.

Section 7. ENFORCEMENT.

This local law shall be enforced by the Code Enforcement Officer of the Town of Marcellus, or such other individual(s) as designated by the Town Board, it shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this local law and to keep all records necessary and appropriate to the office and to file the same in the office of the Town Clerk.

Section 8. VIOLATIONS.

Any person violating any of the provisions of this local law shall be guilty of an offense and upon a conviction thereof, be given a civil penalty of no less than \$500.00 and no more than \$1,000.00 per day for this violation. Each day's violation shall constitute a separate and additional violation. An action may be commenced in a court of competent jurisdiction to recover such penalty. In addition thereto, violations of this local law shall be subject to being restrained by injunctive relief.

Section 9. CONFLICT WITH OTHER LAWS.

This Local Law is enacted pursuant to the provisions of the Town Law and the Municipal Home Rule Law of the State of New York. During the duration of times that this Law is in effect, it shall take precedence over and shall be considered controlling over contrary laws, ordinances and provisions including, but not limited to, the statutes set forth in the New York Town Law related to zoning and subdivisions. Specifically, this Law is intended to supersede Town Law Sections 130, 261, 262, 263, 264, 265, 267, 267-1, 267-b, 268, 269, 274-1, 274-b, 276, 277, 278 and 279.

Section 10. SEVERABILITY.

If any clause, sentence, paragraph, section, article or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operations to the clause, sentence, paragraph, section, article, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 11. EFFECTIVE DATE.

This Local Law shall become effective immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote and upon roll call, the vote was as follows:

VOTE:	Daniel J. Ross	Aye
	James A. Sheridan	Aye
	Donald G. Sherman	Absent
	Thomas C. Lathrop	Aye
	Kevin O’Hara	Aye

**Resolution duly adopted.
Dated: July 11, 2011**

Discussion Agenda

Items from the Board:

Councilor Lathrop suggested that we look into putting the truck, (including sander, plow) and tractor up for auction. Mr. Ross will look into if the county has a public auction site. Councilor Lathrop made a motion to send the two pieces of equipment to auction. Councilor Sheridan seconded the motion. All voted aye. Carried.

Items from the Floor:

Phil Coccia, Recreation Leader, asked if there was still a workshop scheduled for July 28. He would like to discuss a sign for the park at the workshop. A motion was made by Councilor

Lathrop with a seconded by Councilor O'Hara to change the Workshop meeting from 7:00 pm to 5:00 pm on July 28, 2011. All voted aye. Carried.

Mr. Berwald asked why the Board didn't move forward with the Fire Department Service Award Program. Mr. Ross explained that by not making a motion the door is still open for discussion and the Board will have to see what the Town's Budget will be. Mr. Card will be happy to speak to any board members about what the Fire Department wants.

Don MacLachlan, Highway Superintendent, spoke about FEMA being here. He needs permission to go onto private property to dig up around Arizona Way, Pepperwood Bend and Aqua Dr. Mr. Gascon, Counsel, will like the names of people being affected so that he may draw up a short agreement.

A motion was made by Councilor Lathrop to start work by the Highway Department on the Aqua Drive and Pepperwood Bend drainage issues. Councilor Sheridan seconded this motion and all voted aye. Carried.

Councilor O'Hara made a motion seconded by Councilor Sheridan to adjourn the Marcellus Town Board Meeting at 7:40 pm. All voted aye. Carried.

Respectfully submitted,

Sandy Taylor, Deputy Town Clerk