

**Danby Town Board  
Minutes of Public Hearings and Meeting  
September 12, 2011**

**Present:**

Supervisor: Ric Dietrich  
Councilpersons: Leslie Connors  
Kathy Halton  
Dan Klein  
Dylan Race

**Others Present:**

Town Clerk Pamela Goddard  
Code Office Sue Beeners  
Town Attorney Guy Krogh  
Highway Department Laura Shawley  
Public

Roughly 50 persons, including Ronda Roaring, Ted Crane, Laura Bigler, Robert Roe, Jennifer Tiffany, Steve Selin, Anne Klingensmith, Naomi Strichartz, Mary Ann Barr, Heide and Ross Horowitz, Alan Collmer, Rosie Perry, Linda Beebe, Mark Fowler, Ross and Elaine Cortright, Bill Sheffield, Jonathan Zisk, Betsy Wohl, Ramsey Brous, Roger and Joan Grant, Sim Redmond, Cheyenne Cardamone-Knewstub, Clare Fewhell, Stephen and Thresa Gibian, Tony Serviente, Bev Fitzpatrick, Jonathan Joseph, Carol Bushburg, Lamar Herrin, Richard Lazarus.

**The Danby Town Board opened a Public Hearing for Environmental Review of proposed amendments to the Danby Comprehensive Plan at 6:30pm.**

Clerk Goddard read the following legal notice, as published in the Ithaca Journal on August 12, 2011.

PLEASE TAKE NOTICE, that the Town of Danby Town Board will hold the following Public Hearings on September 12, 2011 at the Danby Town Hall, 1830 Danby Road, Ithaca, NY:

6:30 and 6:45 p.m. respectively- PUBLIC HEARINGS to consider a determination of Environmental Significance and to consider adoption of **Proposed Town of Danby Comprehensive Plan Amendment**

This action is a clarification of and amendment to the Comprehensive Plan, last amended and adopted September 22, 2003, to state and clarify the meaning, application, and import of prior uses of the term "industrial," and to further state and declare the intentions of the Town and its citizens:

- (i) to maintain the rural, small town character of the Town; and
- (ii) to preserve valuable and unique natural, ecological, and geographic features of the Town, including, but not limited to aquifers, riparian and littoral corridors, unique natural areas, open spaces, agricultural areas, and working landscapes; and
- (iii) to preserve and protect the health and welfare of the Town and its citizens by providing for orderly and controlled growth, prohibiting and regulating high impact industrial and commercial uses and operations (including but not limited to high volume hydraulic fracturing), and thus preserve and protect the rural, small town character of the Town and public health and welfare.

Accordingly, certain heavy industrial uses, high impact industrial and commercial operations, and hydrofracking are inconsistent with rural character, neighborhoods, quality of life, and the stated desire not to pursue, develop, allow, or encourage certain industrial activities or impacts within the Town of Danby. The potential for negative social, environmental and economic impacts makes certain industries and activity inconsistent and incompatible with the Town of Danby and its Comprehensive Plan.

CEO Sue Beeners presented an overview of the environmental determination for this action (details of which are recorded in Resolution #93). Beeners also explained the public hearing process that would unfold during the course of the evening. As the Comprehensive Plan is considered an administrative tool, to guide Town planning policy, this would not have any significant environmental consequences on its own. Impacts on water quality and uses, energy use, density of land use, and economic development were reviewed and considered to be speculative and insignificant.

There were some questions from the public, including questions regarding the term “hydraulic fracturing” in relation to drilling home or public water wells. The Town Attorney expressed the opinion that the difference between drilling water wells and high impact industrial or commercial uses is legally clear. This does not cause a conflict for the environmental review. There was an additional question as to what authority the Town might have in the case of potential water contamination from gas drilling fracturing fluids. At this time, local municipalities have no control of what is used in these high impact industrial uses. The Town has been advised that an aquifer can not be cleaned once it is contaminated.

**Public Hearing was closed at 6:46pm.**

**The Danby Town Board opened a Public Hearing for considering adoption of proposed amendments to the Danby Comprehensive Plan at 6:46pm.**

Several people spoke in favor of adopting the proposed amendments to the Danby including R Horowitz, N Strichartz, A Klingensmith, S Selin, T Crane, R Roaring, J Tiffany. In addition, Clerk Goddard read comments which were received via Email of the amendments from 12 residents. All correspondence was in favor of the amendments and the proposed zoning ordinance.

Roaring asked a question about editorial revisions she had suggested at an earlier time. Clerk Goddard read aloud three changes which had been made to the document during the time since public hearing notice was given: p. 9 Section 3, last bullet: change historic to historical. p. 15, Item 22, third from last line: add semicolon after "prohibited." p. 21, Item 42, change phrase to read "to ensure that adequate industrial and high impact industrial operations and uses continue to be funded, encouraged, and permitted in surrounding areas outside of the Town where the same are currently permitted and allowed," (previously just 'areas'). Any other editorial changes will wait until a full review/update of the Danby Comprehensive Plan, scheduled for 2012.

Crane urged the Town to adopt these amendments, as well as the zoning ordinance, as the only way to protect residents from direct negative impacts of high impact industrial activity, as opposed to indirect economic effects that might be addressed by other legislation. He also urged the Town to set aside money for a possible legal challenge to the ban and to be prepared to defend this as vigorously as possible.

**Public Hearing was closed at 7pm.**

## **The Danby Town Board opened its regular meeting at 7pm**

There were questions and a discussion about road use and repair concerns. Supervisor Dietrich advised those in attendance that a set of Road Use Laws and procedures are being drafted. These will come up for public review and input through public hearing in the next few months.

There was a question regarding the enforcement of various measures including the Zoning Prohibition, Road Use Agreements, processing and uses of fracking fluid and flowback fluid (including the use of “brine” on road surfaces). Dietrich and members of the Town Board addressed these concerns to the best of their ability. Some enforcement issues will be impacted by NYS regulations, which have not yet be finalized.

There was a short discussion regarding the actions property owners are able to take, to place mining restrictions on land—to prohibit future leasing—and whether those restrictions can be passed on to future buyers of the land. Implementation of lease restrictions are legally problematic; conservation easements are one of the most accepted methods of implementing restrictions.

The Town Board considered the following resolutions:

### **Resolution No. 93 of 2011 - PROPOSED TOWN OF DANBY COMPREHENSIVE PLAN AMENDMENT – CONSIDER DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE**

**WHEREAS**, the Town Board of the Town of Danby is considering adoption of a “Town of Danby Comprehensive Plan Amendment”; and

**WHEREAS**, the Town Board on July 11, 2011 has classified the adoption of said amendment as a Type I action under Environmental Conservation Law Article 8 and NYCRR Part 617, commonly referred to as SEQRA; and

**WHEREAS**, the Town Board has determined that it should be Lead Agency in environmental review of this action; and has authorized the Town Clerk to issue a Notice of Intent to all potential involved and interested agencies, with the Planning Board and the Tompkins County Department of Planning being involved agencies; and

**WHEREAS**, the Town Board has referred said proposed “Town of Danby Comprehensive Plan Amendment” to the Town of Danby Planning Board for review and recommendation; and

**WHEREAS**, the Town of Danby Planning Board by Resolution 22 of 2011 on July 28, 2011 affirmed that the Town Board should be Lead Agency in environmental review; and further indicated that it had reviewed the proposed amendment, made a thorough review of the Long Environmental Assessment Form for this action, thoroughly considered potential areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment; and recommended to the Town Board that a Negative Determination of Environmental Significance or Negative Declaration pursuant to SEQRA be made for this action; and

**WHEREAS**, the proposed “Town of Danby Comprehensive Plan Amendment” was also referred to the Tompkins County Department of Planning for review and recommendation pursuant to General Municipal Law 239-l and-m; and

**WHEREAS**, the Tompkins County Department of Planning by letter dated August 30, 2011 has determined that it has no negative inter-community or county-wide impacts; and

**WHEREAS**, the Town Board of the Town of Danby is once again declared as the Lead Agency for environmental review of this Type I action; and has duly conducted a public hearing to consider potential environmental impacts and to consider a determination of environmental significance on September 12, 2011 at the Danby Town Hall, at which hearing the Long Environmental Assessment Form for this action was reviewed and impacts duly identified, and all testimony and evidence was had and heard concerning the matter; and

**WHEREAS**, the Town Board has reviewed the proposed amendment, and has thoroughly considered potential areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment; and

**WHEREAS**, the environmental impacts identified are as follows:

1. “Developable area of site contains a protected water body” was checked as a potential impact. There are many areas of the Town that contain protected water bodies, including streams, tributaries, ponds, lakes, and

related water bodies and riparian and littoral areas and corridors. However, the potential impacts will be positive in that these areas will be protected by the guidance process supplied by the Comprehensive Plan.

To the extent there may be negative impacts, such as through a plan that does envision continued support for small-scale commercial and light industrial development:

- (i) this does not represent a change from the prior Comprehensive Plan;
- (ii) the likelihood of any such impact will be mitigated by zoning, site planning, special permitting, building codes, and other permit processes; and
- (iii) there are not foreseeable local socio-economic impacts for the Town or the region that are of such a scope, character, or probability of occurrence that make such potential impacts significant, such that, in total, such impacts are deemed minor, mitigated, and non-significant.

2. "Impact on Energy" was indicated, as the prohibition of oil and gas exploration, mining, and production may limit acquisition of energy sources by persons within spacing units who may opt to build pipelines from processors and compressors to their homes (or other lands). Thus, this impact is identified as it may potentially limit energy supplies within the Town that might otherwise potentially be available.

However, and while such an impact cannot be mitigated, it is deemed a small to moderate impact, and ultimately insignificant, as such impact is remote, highly speculative, and more than offset, as an impact, by the positive ecological effects of avoiding pipeline construction, compressor stations, etc. As well, gas utility services are available in many areas of the Town, further mitigating any such theoretical loss of energy supplies. Hence, this impact is deemed minor and non-significant.

3. "Proposed Action will cause a change in the density of land use" was indicated as a potential impact, as the prohibition of high impact commercial and industrial uses and operations will generally tend to prohibit and limit the density of commercial and industrial uses and operations, and may thus lead to sprawl (and, ironically, lower densities of land uses which would be consistent with the rural character of the Town). Nonetheless sprawl is a potential impact and is sought to be avoided. However, and in consideration of all factors, this potential impact is deemed non-significant because the Comprehensive Plan (and the related zoning ordinance) only allows industrial and business clustering within certain zones, including, in particular, Planned Development Zones ("PDZ"). This tends to, in fact promote, density of such uses, thereby preventing sprawl (and, as well, clustering and TDR rights may also be utilized). As importantly, stricter site planning and subdivision controls can apply within PDZs thereby discouraging sprawl and allowing mitigation of such potential impact. As well, PDZs tend to cause the clustering of business and commercial operations in discrete areas, which also offsets the potential impact of sprawl.

As well, and given no heavy or high impact commercial or industrial developmental pressures over the past two decades within the Town, in part because such uses are more suitable for, and located in, nearby urban areas, the likelihood of such impact is deemed very small and quite speculative. Thus, with a low probability of the impact occurring, the mitigation through zoning and permitting, and the lack of any regional consequence to such potential impact, the Town deems such impact minimal, mitigated, and therefore non-significant.

4. "Proposed Action will set an important precedent for future projects" was indicated, as the declarations in, clarifications of, and amendments to the Comprehensive Plan will set precedents that may preclude certain heavy industries and high impact commercial and industrial uses and operations, thereby, instead, promoting cottage businesses, service industries, and small scale business, commercial, and light industrial uses and operations. This can tend as well to result in a greater number of businesses than might otherwise occur, as, and for an illustrative example, one large department store could not be replaced by one small clothier, shoe store, or furniture store. However, in consideration of the overall goals of the Comprehensive Plan, the Town has determined that the small town, rural character of the Town will be preserved by favoring lower impact uses and operations. While several smaller stores may have a cumulative impact that is arguably equivalent in some respects to one larger commercial operation, it is determined that smaller scale operations have impacts that are easier to mitigate, and that the smaller operations, in fact, cumulatively have fewer impacts, particularly as to traffic, noise, congestion, view sheds, and other similar impacts.

Again, given that for the past two decades such larger scale development pressure has not existed, and given that it is the goal of the Comprehensive Plan to steer towards a type and style of development that is consistent with existing community uses and goals and a small town, rural character, and given that such impact is

minor and mitigated and offset by the benefits of more controlled growth and fewer non-mitigated impacts, the Town deems this potential impact to be minor and therefore non-significant.

5. "Proposed Action will create or eliminate employment" was indicated, as the prohibition of high impact industrial and commercial uses and operations may have the effect of limiting future employment growth as such industries and commercial uses tend to also have higher employment rates due to the size and scale of operations. However, the history of the Town of Danby shows that, for over 40 years, most businesses are cottage operations, some of which grow locally and expand. The Town finds that these "local" operations tend to produce more local hiring than out-of-town-based operations, and that, even if such conclusion is inaccurate, there has been no such developmental pressure on the Town for over 20 years such that it is highly speculative to conclude that this action will result in a loss of, or a future reduction in, the number of available jobs.

Simply put, the Town of Danby has historically lacked industrial and commercial activities, and opportunities for such employment exist in nearby urban areas and business parks, such as in the Town of Ithaca, the Village of Spencer, and the City of Ithaca. As well, promoting smaller scale business operations will still promote jobs and still be consistent with the goals of the Town to maintain its rural character and preserve its vital ecosystems and aquifers. Hence, while indicated, this potential impact is deemed speculative, minor, and mitigated, and therefore non-significant;

**NOW, THEREFORE, IT IS**

**RESOLVED**, that the Town Board of the Town of Danby, acting as Lead Agency in environmental review of this Type I action, finds the following:

1. This action is a clarification of and amendment to the Comprehensive Plan, last amended and adopted September 22, 2003, to state and clarify the meaning, application, and import of prior uses of the term "industrial," and to further state and declare the intentions of the Town and its citizens:

(i) to maintain the rural, small town character of the Town; and

(ii) to preserve valuable and unique natural, ecological, and geographic features of the Town, including, but not limited to aquifers, riparian and littoral corridors, unique natural areas, open spaces, agricultural areas, and working landscapes; and

(iii) to preserve and protect the health and welfare of the Town and its citizens by providing for orderly and controlled growth, prohibiting and regulating high impact industrial and commercial uses and operations (including but not limited to high volume hydraulic fracturing and other types of fracturing), and thus preserve and protect the rural, small town character of the Town and public health and welfare.

Accordingly, certain heavy industrial uses, and high impact industrial and commercial operations, (including but not limited to high volume hydraulic fracturing and other types of fracturing) are inconsistent with rural character, neighborhoods, quality of life, and the stated desire not to pursue, develop, allow, or encourage certain industrial activities or impacts within the Town of Danby. The potential for negative social, environmental and economic impacts makes certain industries and activity inconsistent and incompatible with the Town of Danby and its Comprehensive Plan.

2. SEQRA reviews seek impact analysis for many site specific developments, projects, or approvals. Here, the change is administrative in nature and does not involve the alteration of the land, any physical changes in land or structures, the creation of new structures, or any major re-ordering of environmental or other priorities. Thus, since the true impacts of this project would be to enhance the environment, including land features, aesthetic resources, visual resources, aquifers, protected and non-protected water bodies and corridors, wetlands, plant and animal communities, historic and cultural sites of importance, agricultural uses and landscapes, rare, threatened and endangered flora and fauna, etc. hence, no negative impacts are anticipated by the adoption of this amendment to the Comprehensive Plan.

3. Hence, the impacts that have been identified are found to be speculative in terms of any potential negative impacts, and thus improbable. As well, such impacts are and can be mitigated by other actions and regulations, are non-regional in consequence, and do not have a scope or magnitude as to be likely to produce any negative impacts to the social and economic fabric, make up, or future of the community or the region; and it is

**FURTHER RESOLVED**, after consideration of the above impacts, and other impacts required under 6 NYCRR Part 617, Section 617.7(c), as well as assessing and weighing: (i) the probability of each potential impact occurring; (ii) the duration of each potential impact; (iii) the irreversibility of each potential impact, including permanently lost resources of value; (iv) whether each potential impact can or will be controlled or mitigated by permit-

ting or other processes; (v) the regional consequence of the potential impacts; (vi) the potential for each impact to be or become inconsistent with the Town's master plan and/or Comprehensive Plan and local needs and goals; (vii) whether any known objections to the Project relate to any of the identified potential impacts; and (viii) impacts based upon the scope, magnitude, setting, of the action or approval, or the number of people affected by the action or approval, that the Town Board finds that the proposed action – updating and amending the Town of Danby Comprehensive Plan - will have no negative environmental consequences; and it is

**FURTHER RESOLVED, AND DETERMINED**, that this declaration is made in accord with Article 8 of the Environmental Conservation Law of the State of New York and the New York SEQRA Act, and the Regulations promulgated there under (6 NYCRR Part 617), and accordingly, the Town Board of the Town of Danby, based upon (i) its thorough review of the Long Environmental Assessment Form, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and the hearing held hereupon, and all testimony and evidence presented thereat, if any, and the comments of Involved and Interested Agencies, if any, and the County Planning review recommendations and comments, if any, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including, but not limited to, the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the Long Environmental Assessment Form, including the general comments and the findings therein and within this Resolution, hereby makes a negative determination of environmental significance (“Negative Declaration”) in accordance with SEQRA for the above referenced proposed action, and determines that an Environmental Impact Statement is therefore not required; and it is

**FURTHER RESOLVED**, that a Responsible Officer of the Town Board of the Town of Danby is hereby authorized and directed to complete and sign, as required, the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed Long Environmental Assessment Form and determination of significance shall be incorporated by reference in this Resolution; and it is

**FURTHER RESOLVED**, that the Town Clerk deliver and/or file a copy of this Resolution with the following persons and agencies:

1. The Town Clerk of the Town of Danby.
2. The Town Supervisor of the Town of Danby.
3. The Town of Danby Planning Board, the N. Y. State Dept. of Environmental Conservation and the Tompkins County Dept. of Planning; and it is

**FURTHER RESOLVED**, that this Resolution be posted and published in accord with law, including delivery of a copy of this Resolution to the Environmental Notice Bulletin in accord with 6NYCRR 617.12 upon the forms as required by the New York State Dept. of Environmental Conservation.

**Moved by Klein, Second by Connors. The motion passed.**

**In Favor: Connors, Halton, Klein, Race, Dietrich**

**RESOLUTION NO. 94 OF 2011 - PROPOSED TOWN OF DANBY COMPREHENSIVE PLAN AMENDMENT – CONSIDER ADOPTION**

**WHEREAS**, the Town Board of the Town of Danby is considering adoption of a “Town of Danby Comprehensive Plan Amendment”; and

**WHEREAS**, the Town Board on September 12, 2011, acting as Lead Agency in environmental review of this Type I action, has made a negative determination of environmental significance pursuant to Environmental Conservation Law Article 8 and NYCRR Part 617; and

**WHEREAS**, the Town Board referred said proposed “Town of Danby Comprehensive Plan Amendment” to the Town of Danby Planning Board for review and recommendation; and

**WHEREAS**, the Town of Danby Planning Board by Resolution 22 of 2011 on July 28, 2011 recommended that the Town Board adopt said amendment; and

**WHEREAS**, the proposed “Town of Danby Comprehensive Plan Amendment” was also referred to the Tompkins County Department of Planning for review and recommendation pursuant to General Municipal Law 239-l and-m; and

**WHEREAS**, the Tompkins County Department of Planning by letter dated August 30, 2011 has determined that it has no negative inter-community or county-wide impacts; and

**WHEREAS**, notification of this action has been made to adjacent municipalities, county legislatures, and the N.Y. State Office of Parks, Recreation, and Historic Preservation; and

**WHEREAS**, the Town Board duly conducted a public hearing to consider adoption of said “Town of Danby Comprehensive Plan Amendment” on September 12, 2011 at the Danby Town Hall, where the proposed amendment was reviewed and all testimony and evidence was had and heard concerning the matter; and

**NOW, THEREFORE, IT IS**

**RESOLVED**, that the Town Board of the Town of Danby hereby adopts the proposed “Town of Danby Comprehensive Plan Amendment,” which amendment is incorporated by reference in this resolution; and it is

**FURTHER RESOLVED**, that the Town Clerk is directed to publish a notice of adoption of said amendment in the official newspaper of the Town; and it is

**FURTHER RESOLVED**, that the Town Clerk shall file a certified copy of this resolution and a copy of the adopted amendment in the office of the Town Clerk and in the office of the Tompkins County Department of Planning.

The Planning Board Chair, Robert Roe, suggested an additional “Whereas” to the effect that this action is in compliance with periodic NYS mandated review and updating of Town comprehensive plans. After some discussion, including an opinion from the town attorney, it was decided that such an additional “Whereas” was not needed at this time.

**Moved by Connors, Second by Halton. The motion passed.**

**In Favor: Connors, Halton, Klein, Race, Dietrich**

**The Danby Town Board opened a Public Hearing for Environmental Review of proposed Local Law #3 of 2011 Amending and Clarifying the Town of Danby, Tompkins County, New York Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities at 7:36pm.**

Clerk Goddard read the following legal notice, as published in the Ithaca Journal on August 12, 2011.

To be followed by PUBLIC HEARINGS at 7:30 and 7:45 respectively to consider a determination of Environmental Significance and to consider adoption of Proposed Town of Danby Zoning Amendment – Proposed “Local Law Amending and Clarifying the Town of Danby, Tompkins County, New York Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities”

This action is a clarification and amendment to the Town of Danby Zoning Ordinance to clarify and update such Ordinance by:

- (i) clarifying allowed uses and distinguishing between light industrial and commercial uses and heavy impact commercial and industrial uses and operations; and
- (ii) defining certain industrial uses (such as but not limited to natural gas and petroleum mining and related activities including high volume hydraulic fracturing and other types of fracturing); and
- (iii) prohibiting natural gas and oil exploration and production, and related activities; and
- (iv) declaring the Town’s Constitutional power of supersession and adding general terms relating to invalidity and savings clauses, limitations upon Town liability and
- (v) declaring such local law, being amendments to the Zoning Ordinance, to be and become immediately effective.

Accordingly, certain heavy industrial uses, high impact industrial and commercial operations, and natural gas and petroleum mining and related activities are inconsistent with rural character, neighborhoods, quality of life, and the stated desire not to pursue, develop, allow, or encourage certain industrial activities or impacts within the Town of Danby. The potential for negative social, environmental and economic impacts makes certain industries and activity inconsistent and incompatible with the Town of Danby and its Comprehensive Plan.

R. Horowitz again raised a concern about the terms “hydrofracking,” “slickwater hydrofracturing” and whether there are exclusions for water wells. This led to a general discussion about the most appropriate level of specificity for the language of this ordinance. A section of the law was referenced, that does specifically exclude water wells from this prohibition. Beeners additionally responded that the ordinance does not prohibit a specific technology but rather a set of activities, general processes, and substances. Attorney Krogh quoted a section of the ordinance addressing this issue.

CEO Sue Beeners presented an overview of the environmental determination for this action (details of which are recorded in Resolution #95). The sum of these comments leads to a recommendation of a negative declaration of environmental consequences.

There were some questions from the public regarding ancillary activities (worker housing, support activities, staging and storage areas), the potential for legal challenge, and the costs/benefits of several towns enacting similar legislation. These questions were addressed by Beeners, Dietrich, and Krogh.

**Public Hearing was closed at 8:08pm.**



**The Danby Town Board opened a Public Hearing for considering adoption of proposed Local Law #3 of 2011 Amending and Clarifying the Town of Danby, Tompkins County, New York Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities at 8:08pm.**

The Town Board stated that comments from the previous public hearings will be considered at this hearing as well.

There were additional questions from the public regarding ancillary activities, such as sand and gravel mining and related truck traffic. The Town Attorney spoke to municipal rights to prohibit extractive mining through zoning. A determination would need to be made as to the level of sand and gravel mining, whether it was light or heavy industrial activity. There was a general discussion about the relationship between the zoning proposed in LL #3 of 2011 and a proposed Road Use Law in the draft stages.

Several people spoke in support of adoption for this ordinance, including N Strichartz, J Zisk, S Selin, and others. Gay Garrison presented the Town Board with a petition including approximately 500 signatures, requesting that the Town Board, "amend existing ordinances to ensure that high-impact industry, including gas drilling, is prohibited within the Town of Danby." Garrison spoke about her experience during the petition drive and the level of support she encountered. Anne Klingensmith added her petitioning experiences, reporting the information that there is strong support for this action even in the face of a potential suit.

**Public Hearing was closed at 8:34pm.**

The Town Board considered the following resolutions:

**Resolution No. 95 of 2011 - PROPOSED "LOCAL LAW Amending and Clarifying the Town of Danby, Tompkins County, New York, Zoning Ordinance to Prohibit Gas and petroleum mining and related activities" – CONSIDER DETERMINATION OF ENVIRONMENTAL SIGNIFICANCE**

**WHEREAS**, the Town Board of the Town of Danby is considering adoption of a proposed local law entitled "A Local Law Amending and Clarifying the Town of Danby, Tompkins County, New York, Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities"; and

**WHEREAS**, the Town Board on July 11, 2011 has classified the adoption of said zoning amendment as a Type I action under Environmental Conservation Law Article 8 and NYCRR Part 617, commonly referred to as SEQRA; and

**WHEREAS**, the Town Board has determined that it should be Lead Agency in environmental review of this action; and has authorized the Town Clerk to issue a Notice of Intent to all potential involved and interested agencies, with the Planning Board and the Tompkins County Department of Planning being involved agencies; and

**WHEREAS**, the Town Board has referred said zoning amendment to the Town of Danby Planning Board for a report thereon; and

**WHEREAS**, the Town of Danby Planning Board by Resolution 23 of 2011 on July 28, 2011 affirmed that the Town Board should be Lead Agency in environmental review; and further reported that it had reviewed the proposed zoning amendment, made a thorough review of the Long Environmental Assessment Form for this action, thoroughly considered potential areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment; and recommended to the Town Board that a Negative Determination of Environmental Significance or Negative Declaration pursuant to SEQRA be made for this action;

**WHEREAS**, the proposed zoning amendment was also referred to the Tompkins County Department of Planning for review and recommendation pursuant to General Municipal Law 239-l and-m; and

**WHEREAS**, the Tompkins County Department of Planning by letter dated August 30, 2011 has determined that it has no negative inter-community or county-wide impacts; and

**WHEREAS**, the Town Board of the Town of Danby is once again declared as the Lead Agency for environmental review of this Type I action; and has duly conducted a public hearing to consider potential environmental impacts and to consider a determination of environmental significance on September 12, 2011 at the Danby Town Hall, at

which hearing the Long Environmental Assessment Form for this action was reviewed and impacts duly identified, and all testimony and evidence was had and heard concerning the matter; and

**WHEREAS**, the Town Board has reviewed the proposed zoning amendment, and has thoroughly considered potential areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment; and

**WHEREAS**, the environmental impacts identified are as follows:

1. "Developable area of site contains a protected water body" was identified as a potential impact. There are many areas of the Town that contain protected water bodies, including streams, tributaries, ponds, lakes, and related water bodies and riparian and littoral areas and corridors. However, the potential impacts will be positive in that these areas will be protected by the incorporation of zoning amendments designed to protect such areas and regulate high impact uses or operations.

To the extent there may be negative impacts, such as through the continuation of allowed uses classified as small-scale commercial and/or light industrial development:

(i) this does not represent a change, or significant change, from existing zoning regulations and their historic interpretation and application;

(ii) such amendments are in conformity with the historical and updated Comprehensive Plan;

(iii) the likelihood of any such impact will be mitigated by zoning, site planning, special permitting, building codes, and other permit processes; and

(iv) there are not foreseeable local socio-economic impacts for the Town or the region that are of such a scope, character, or probability of occurrence that make such potential impacts significant, such that, in total, such impacts are deemed minor, mitigated, and non-significant.

2. "Impact on Energy" was indicated, as the prohibition of oil and gas exploration, mining, and production may limit acquisition of energy sources by persons within spacing units who may opt to build pipelines from processors and compressors to their homes (or other lands). As well, and to the extent there are, or may be, minable quantities of natural gas and other hydrocarbons located underneath the incorporated boundaries of the Town of Danby, the inability to explore for, develop, extract, and produce such gas or hydrocarbons could arguable have an impact on regional or national gas supplies. Thus, these impacts are identified as they may potentially limit energy supplies both within and without the Town that might otherwise potentially be available.

However, and while such an impact cannot be mitigated, it is deemed a small to moderate impact, and ultimately insignificant, as such impact is remote, highly speculative, and more than offset, as an impact, by the positive ecological effects of avoiding pipeline construction, compressor stations, etc., related construction effects, traffic and roadway impacts, noise, and the potential impacts of gas exploration and production activities that are deemed very likely to impact aquifers, wetlands, and other sensitive land areas, rare and protected animals and plants. As well, gas utility services are available in many areas of the Town further mitigating any such theoretical loss of energy, and gas production from other regions, within and without New York State, will further offset any potential national or regional impacts. Hence, this potential impact is deemed minor and non-significant.

3. "The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project" was indicated as a potential impact, as there could arguably be more applications relating to commercial and industrial uses to obtain a code or zoning opinion as to whether a use qualifies as "Light Industry" and is thus an allowed use. This will then also potentially cause an increase in the number of determinations, questions, appeals, and variance applications before the ZBA, as well as potentially increase the number of site plan, zoning, and Planned Development Zone ("PDZ") reviews for the Planning Board. Related increases in the internal operating costs of government are not expected to meet the 5% threshold, but as it is possible that this could occur, this impact must be, and has been, analyzed and subject to the requisite "hard look" required under SEQRA. It is determined that this impact is speculative and, that, in any event, since such uses would generally, and almost always, be required within a PDZ, the net overall increase in cost will be minimal as PDZ development and review are (i) comprehensive reviews in the first instance, and (ii) subject to cost offsets under Developer's Agreements and permit application fees. Hence, this potential impact is deemed small, mitigated, and therefore non-significant.

To the extent that an overall challenge to the validity of such zoning amendments is a potential cost, whether due to claims relating to property rights, preemption, or supersession, or otherwise, and whether as to particular provisions (e.g., § 518) or overall, this potential impact is not deemed relevant to the determination of signifi-

cance under this SEQRA review as the possibility of such one or more claims is speculative, remote, and not materially different from other day-to-day operational liabilities that attend any zoning change, local laws that limit or restrict rights of use in land, or other claims arising from normal governmental operations, such as, but not limited to, employment claims, civil rights claims, or Article 78 challenges to resolutions, regulations, interpretations, permitting, zoning, local laws, ordinances, water districts and other improvement areas and districts, assessment and taxation, highway improvements and condemnations for public purposes, and a plethora of other governmental activities and events that can lead or give rise to claims and expenses. Further, if such a claim arises, the Town can amend or repeal the law and limit such expense, particularly where it is determined by a higher governmental or judicial authority whether, and the extent to which, these amendments are valid and enforceable, or the extent to which they may need modification to be and remain valid and enforceable. Therefore, even in combination with the other impacts identified in connection with this paragraph 3, the cumulative effect of such potential claims is not deemed to be materially different from other liabilities of the Town, are mitigate-able effects, and not, in any event, significant enough to rate (or re-rate, classify, or re-classify) this impact above small to moderate, thus not impacting the finding that the effect of the above impacts is non-significant in terms of this environmental review.

4. "Proposed Action will cause a change in the density of land use" was indicated as a potential impact, as the prohibition or regulation of high impact commercial and industrial uses and operations will generally tend to prohibit and limit the density of commercial and industrial uses and operations, and may thus lead to sprawl (and, ironically, lower densities of land uses which would be consistent with the rural character of the Town). Nonetheless sprawl is a potential impact and is sought to be avoided. However, and in consideration of all factors, this potential impact is deemed non-significant because existing zoning, the zoning as proposed to be amended (consistent with the Comprehensive Plan) only allow industrial and business uses and clustering within certain zones, including, in particular, PDZs. This tends to, in fact, promote the density of such uses, thereby preventing sprawl (and, as well, clustering and TDR rights may also be utilized). As importantly, stricter site planning and subdivision controls can apply within PDZs thereby discouraging sprawl and allowing mitigation of such potential impact. As well, PDZs tend to cause the clustering of business and commercial operations in discrete areas, which also offsets the potential impact of sprawl.

As well, and given no heavy or high impact commercial or industrial developmental pressures over the past two decades within the Town, in part because such uses are more suitable for, and located in, nearby urban areas, the likelihood of such impact is deemed very small and quite speculative. Thus, with a low probability of the impact occurring, the mitigation through zoning and permitting, and the lack of any regional consequence to such potential impact, the Town deems such impact minimal, mitigated, and therefore non-significant.

5. "Proposed Action will set an important precedent for future projects" was indicated, as these zoning amendments will set precedents that may preclude certain heavy industries and high impact commercial and industrial uses and operations, thereby, instead, promoting cottage businesses, service industries, and small scale business, commercial, and light industrial uses and operations. This can tend as well to result in a greater number of businesses than might otherwise occur, as, and for an illustrative example, one large department store could not be replaced by one small clothier, shoe store, or furniture store.

However, in consideration of the overall goals of the Comprehensive Plan, the Town has determined that the small town, rural character of the Town will be preserved by favoring lower impact uses and operations. While several smaller stores may have a cumulative impact that is arguably equivalent in some respects to one larger commercial operation, it is determined that smaller scale operations have impacts that are easier to mitigate, and that the smaller operations, in fact, cumulatively have fewer impacts, particularly as to traffic, noise, congestion, view sheds, and other similar impacts.

Again, given that for the past two decades such larger scale development pressure has not existed, and given that it is the goal of the Comprehensive Plan to steer towards a type and style of development that is consistent with existing community uses and goals and a small town, rural character, and given that such impact is minor and mitigated and offset by the benefits of more controlled growth and fewer non-mitigated impacts, the Town deems this potential impact to be minor and therefore non-significant.

6. "Proposed Action will create or eliminate employment" was indicated, as the prohibition of high impact industrial and commercial uses and operations may have the effect of limiting future employment growth as such industries and commercial uses tend to also have higher employment rates due to the size and scale of operations. However, the history of the Town of Danby shows that, for over 40 years, most businesses are cottage

operations, some of which grow locally and expand. The Town finds that these “local” operations tend to produce more local hiring than out-of-town-based operations, and that, even if such conclusion is inaccurate, there has been no such developmental pressure on the Town for over 20 years such that it is highly speculative to conclude that this action will result in a loss of, or a future reduction in, the number of available jobs.

Simply put, the Town of Danby has historically lacked industrial and commercial activities, and opportunities for such employment exist in nearby urban areas and business parks, such as in the Town of Ithaca, the Village of Spencer, and the City of Ithaca. As well, promoting smaller scale business operations will still promote jobs and still be consistent with the goals of the Town to maintain its rural character and preserve its vital ecosystems and aquifers. Hence, while indicated, this potential impact is deemed speculative, minor, and mitigated, and therefore non-significant;

**NOW, THEREFORE, IT IS**

**RESOLVED**, that the Town Board of the Town of Danby, acting as Lead Agency in environmental review of this Type I action, finds the following:

1. This action is a clarification and amendment to the Town of Danby Zoning Ordinance to clarify and update such Ordinance by:
  - (i) clarifying allowed uses and distinguishing between light uses and heavy impact commercial and industrial uses and operations; and
  - (ii) defining certain industrial uses (such as but not limited to high volume hydraulic fracturing terminology); and
  - (iii) prohibiting natural gas and oil exploration and production, and related activities; and
  - (iv) declaring the Town's Constitutional power of supersession and adding general terms relating to invalidity and savings clauses, limitations upon Town liability and
  - (v) declaring such local law, being amendments to the Zoning Ordinance, to be and become immediately effective.

Accordingly, certain heavy industrial uses, high impact industrial and commercial operations, and hydro-fracking are inconsistent with rural character, neighborhoods, quality of life, and the stated desire not to pursue, develop, allow, or encourage certain industrial activities or impacts within the Town of Danby. The potential for negative social, environmental and economic impacts makes certain industries and activity inconsistent and incompatible with the Town of Danby and its Comprehensive Plan.

2. SEQRA reviews seek impact analysis for many site specific developments, projects, or approvals. Here, the change is administrative in nature and does not involve the alteration of the land, any physical changes in land or structures, the creation of new structures, or any major re-ordering of environmental or other priorities. Thus, since the true impacts of this project would be to enhance the environment, including land features, aesthetic resources, visual resources, aquifers, protected and non-protected water bodies and corridors, wetlands, plant and animal communities, historic and cultural sites of importance, agricultural uses and landscapes, rare, threatened and endangered flora and fauna, etc., and to make the Zoning Ordinance be and remain in conformance with the Town's Comprehensive Plan, including, but not limited to, ensuring orderly growth and the maintenance of the Town's rural, small town character, no negative impacts are anticipated by the adoption of these amendments to the Zoning Ordinance.

3. Hence, the impacts that have been identified are found to be speculative in terms of any potential negative impacts, and thus improbable. As well, such impacts are and can be mitigated by other actions and regulations, including zoning proceedings such as site plan review, special permitting, and variances, are non-regional in consequence, and do not have a scope or magnitude as to be likely to produce any negative impacts to the social and economic fabric, make up, or future of the community or the region; and it is

**FURTHER RESOLVED**, after consideration of the above impacts, and other impacts required under 6 NYCRR Part 617, Section 617.7(c), as well as assessing and weighing: (i) the probability of each potential impact occurring; (ii) the duration of each potential impact; (iii) the irreversibility of each potential impact, including permanently lost resources of value; (iv) whether each potential impact can or will be controlled or mitigated by permitting or other processes; (v) the regional consequence of the potential impacts; (vi) the potential for each impact to be or become inconsistent with the Town's master plan and/or Comprehensive Plan and local needs and goals; (vii) whether any known objections to the Project relate to any of the identified potential impacts; and (viii) impacts based upon the scope, magnitude, setting, of the action or approval, or the number of people affected by the action or approval, that the Town Board finds that the proposed action – adoption of the proposed local

law entitled "A Local Law Amending and Clarifying the Town of Danby, Tompkins County, New York, Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities" - will have no negative environmental consequences; and it is

**FURTHER RESOLVED, AND DETERMINED**, that this declaration is made in accord with Article 8 of the Environmental Conservation Law of the State of New York and the New York SEQRA Act, and the Regulations promulgated there under (6 NYCRR Part 617), and accordingly, the Town Board of the Town of Danby, based upon (i) its thorough review of the Long Environmental Assessment Form, and any and all other documents prepared and submitted with respect to this proposed action and its environmental review, and the hearing held hereupon, and all testimony and evidence presented thereat, if any, and the comments of Involved and Interested Agencies, if any, and the County Planning review recommendations and comments, if any, (ii) its thorough review of the potential relevant areas of environmental concern to determine if the proposed action may have a significant adverse impact on the environment, including, but not limited to, the criteria identified in 6 NYCRR §617.7(c), and (iii) its completion of the Long Environmental Assessment Form, including the general comments and the findings therein and within this Resolution, hereby makes a negative determination of environmental significance ("Negative Declaration") in accordance with SEQRA for the above referenced proposed action, and determines that an Environmental Impact Statement is therefore not required; and it is

**FURTHER RESOLVED**, that a Responsible Officer of the Town Board of the Town of Danby is hereby authorized and directed to complete and sign, as required, the determination of significance, confirming the foregoing Negative Declaration, which fully completed and signed Long Environmental Assessment Form and determination of significance shall be incorporated by reference in this Resolution; and it is

**FURTHER RESOLVED**, that the Town Clerk deliver and/or file a copy of this Resolution with the following persons and agencies:

1. The Town Clerk of the Town of Danby.
2. The Town Supervisor of the Town of Danby.
3. The Town of Danby Planning Board, the N. Y. State Dept. of Environmental Conservation and the Tompkins County Dept. of Planning; and it is

**FURTHER RESOLVED**, that this Resolution be posted and published in accord with law, including delivery of a copy of this Resolution to the Environmental Notice Bulletin in accord with 6NYCRR 617.12 upon the forms as required by the New York State Dept. of Environmental Conservation.

**Moved by Halton, Second by Connors. The motion passed.**

**In Favor: Connors, Halton, Klein, Race, Dietrich**

#### **RESOLUTION NO. 96 OF 2011 -PROPOSED "LOCAL LAW AMENDING AND CLARIFYING THE TOWN OF DANBY, TOMPKINS COUNTY, NEW YORK, ZONING ORDINANCE TO PROHIBIT GAS AND PETROLEUM MINING AND RELATED ACTIVITIES" – CONSIDER ADOPTION**

**WHEREAS**, the Town Board of the Town of Danby is considering adoption of a proposed local law entitled "A Local Law Amending and Clarifying the Town of Danby, Tompkins County, New York, Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities"; and

**WHEREAS**, the Town Board on September 12, 2011, acting as Lead Agency in environmental review of this Type I action, has made a negative determination of environmental significance pursuant to Environmental Conservation Law Article 8 and NYCRR Part 617; and

**WHEREAS**, the Town Board referred said proposed zoning amendment to the Town of Danby Planning Board for a report thereon; and

**WHEREAS**, the Town of Danby Planning Board by Resolution 23 of 2011 on July 28, 2011 reported its recommendation to the Town Board that the zoning amendment be adopted; and

**WHEREAS**, the proposed zoning amendment was also referred to the Tompkins County Department of Planning for review and recommendation pursuant to General Municipal Law 239-l and-m; and

**WHEREAS**, the Tompkins County Department of Planning by letter dated August 30, 2011 has determined that it has no negative inter-community or county-wide impacts; and

**WHEREAS**, the Town Board duly conducted a public hearing to consider adoption of said proposed zoning amendment on September 12, 2011 at the Danby Town Hall, where the proposed amendment was reviewed and all testimony and evidence was had and heard concerning the matter; and

**WHEREAS**, due notification to adjacent municipalities, county legislatures, and the N.Y. State Office of Parks, Recreation, and Historic Preservation has been made pursuant to Town Law 264; and

**NOW, THEREFORE, IT IS**

**RESOLVED**, that the Town Board of the Town of Danby hereby adopts the proposed local law entitled "A Local Law Amending and Clarifying the Town of Danby, Tompkins County, New York, Zoning Ordinance to Prohibit Gas and Petroleum Mining and Related Activities"; which amendment is incorporated by reference in this resolution; and it is

**FURTHER RESOLVED**, that in accord with Section 21 of the Municipal Home Rule Law, the final adopted copy of this Local Law shall be presented to the Town Supervisor for approval; and it is

**FURTHER RESOLVED**, that upon such approval by the Supervisor (or other approval occurring pursuant to said Section 21 of the Municipal Home Rule Law), and within 20 days after the final adoption of this Local Law, the Town Clerk shall file a certified copy of this Local Law, together with the required Certifications, in the Office of the Town Clerk and with the New York State Secretary of State as required by Municipal Home Rule Law Section 27; and shall also file a copy of the Local Law in the office of the Tompkins County Department of Planning; and it is

**FURTHER RESOLVED**, that the Town Clerk shall publish a copy of this local law, or a summary or abstract of same, in the official newspaper of the Town, and with an affidavit of publication of such filed in the Office of the Town Clerk, in accordance with Town Law 265.

**Moved by Klein, Second by Race. The motion passed.**

**In Favor: Connors, Halton, Klein, Race, Dietrich**

### **Flood Relief Assistance**

Connors made an announcement informing residents of the devastation to the south of Danby due to recent flooding. She informed people of various ways to make financial and material donations.

### **Adjournment**

The Meeting was adjourned at 8:45pm.

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Pamela S Goddard, Town Clerk

**Appendix A**

**TOWN OF DANBY LOCAL LAW #3 OF 2011  
PASSED SEPTEMBER 12, 2011**

**AMENDMENTS TO TOWN OF DANBY ZONING ORDINANCE**

**A LOCAL LAW AMENDING AND CLARIFYING THE TOWN OF DANBY, TOMPKINS COUNTY, NEW YORK, ZONING ORDINANCE TO PROHIBIT GAS AND PETROLEUM MINING AND RELATED ACTIVITIES**

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF DANBY AS FOLLOWS

SECTION 1: TITLE AND APPLICABILITY – The Town of Danby hereby adopts this local law, to be known as the Town of Danby Local Law Number \_\_ of 2011 (the “Local Law”).”

SECTION 2: PURPOSE – The purpose of this Local Law is to clarify, update, and amend the Town of Danby Zoning Ordinance by, among other things: clarifying allowed uses relative to light industrial uses and operations; clarifying allowed uses relative to gas and oil mining and hydraulic (and other) fracturing; and to ensure that Town of Danby zoning laws comport with the Town of Danby Comprehensive Plan.

SECTION 3: DEFINITIONS – The following definitional terms are added to Appendix I, entitled “Definitions,” of the Town of Danby Zoning Ordinance, and these terms shall have the meanings shown:

**A. LIGHT INDUSTRIAL and LIGHT INDUSTRY (and phrases that use such terms, including, but not limited to, references to light industrial uses or impacts) -** Allowed low-impact industrial uses, which may include, subject to the requirements set forth below, light assembly and fabrication businesses, warehousing and wholesale businesses, light manufacturing or finishing businesses, research and testing facilities and operations, and similar uses, each and all of which shall only be deemed and classified as “low impact” or “Light Industrial” only when: (i) the cumulative environmental and social impacts from such uses or impacts shall not significantly and adversely affect the environment, including, but not limited to, air quality, floodplains, steep slopes, riparian and littoral areas and corridors, wetlands, aquifers and aquifer recharge areas and other fresh water sources; and (ii) such uses or operations shall not materially and adversely affect neighboring land uses or any residential areas of the Town; (iii) the effects or impacts attendant to such uses or operations relating to parking, driveways, roads, traffic, landscaping and screening, noise and vibration emissions, lighting and light emissions, odors and smells, and waste disposal or emissions, are not individually or in the aggregate deemed significantly adverse; and (iv) the overall size of any structures or improvements, in terms of size, height, or the percentage of land coverage of all improvements and parking and road areas, do

not, in any such dimension or percentage, exceed the lesser of 2 acres or 50% of the overall lot area; and (v) where required, all variances, site plan approvals (with or without conditions), and special permit approvals (with or without conditions) have been duly applied for, granted, and timely utilized pursuant to the terms and requirements of the Town of Danby Zoning Ordinance (and any other applicable law, ordinance, rule, or requirement of the Town of Danby).

B. **NATURAL GAS** - methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

C. **NATURAL GAS AND/OR PETROLEUM EXPLORATION** - Geologic or geophysical activities related to the search for Natural Gas, petroleum, or other subsurface hydrocarbons, including prospecting, geophysical and geologic seismic surveying and sampling techniques, which include but are not limited to core or rotary drilling or making an excavation in the search for and evaluation of Natural Gas, petroleum, or other subsurface hydrocarbon deposits.

D. **NATURAL GAS AND/OR PETROLEUM EXPLORATION AND PRODUCTION MATERIALS** - Any solid, semi-solid, liquid, semi-liquid or gaseous material used in the exploration or extraction of Natural Gas.

E. **NATURAL GAS AND/OR PETROLEUM EXTRACTION** - The digging or drilling of a well for the purposes of exploring for, developing, or producing Natural Gas, petroleum or other subsurface hydrocarbons, including without limitation, any and all forms of shale fracturing.

F. **NATURAL GAS EXPLORATION AND/OR PETROLEUM PRODUCTION WASTES** - Any garbage, refuse, cuttings, sludge, flow-back fluids, brine, produced waters, or other discarded materials, including solid, liquid, semi-solid, or contained gaseous material that results from or is associated with the exploration, drilling, or extraction of Natural Gas and/or petroleum and any related hydrocarbons, and any natural or non-natural radioactive, carcinogenic, or toxic chemicals or compounds (herein, "Deleterious Substances") used in or for, occurring or arising from, relating to, or produced by any process or operation relating to the exploration for or the extraction or production of, or the processing, treatment, or transportation of, Natural Gas, petroleum, or any related hydrocarbons, regardless of whether such Deleterious Substances have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste," "hazardous," or "toxic," and regardless of whether considered or classified as "waste" or of a below-regulatory concern level. This defi-



dition specifically intends to include some wastes that may otherwise be classified as “solid wastes which are not hazardous wastes” under 40 C.F.R. § 261.4(b). “Deleterious Substances” shall also include, but not be limited to, crude oil and Natural Gas drilling fluids and their exploration, drilling, production, and processing wastes, such as, but not limited to, fracturing fluids, brine, produced water, flowback water, waste oils, waste emulsified oils, mud and drilling or lubricating mud, contaminated soils, drill cuttings, fracture fluid holding pit or tank contents, sediments or residues, or any of the foregoing whenever transformed into any other liquid, solid or gaseous state by any process.

**G. NATURAL GAS AND/OR PETROLEUM SUPPORT ACTIVITIES** - The construction, use, or maintenance of a storage or staging yard, a water or fluid injection station, a water or fluid gathering station, a Natural Gas or petroleum storage facility, a brine or fracturing/flowback water pit or other enclosed or semi-enclosed container or construct, or a Natural Gas or petroleum gathering line, venting station, compressor, dehydrator, or other appurtenance associated with the exploration or extraction of Natural Gas, petroleum, or any related hydrocarbons.

**SECTION 4: AMENDMENTS TO EXISTING DEFINITIONS** – The definitions contained in Appendix I of the Town of Danby Zoning Ordinance are hereby amended by amending the following definition, as follows:

A. The current definition of “Industrial Establishment” shall be amended by replacing the same with the following: “**INDUSTRIAL ESTABLISHMENT** - shall mean any property or buildings used for Light Industrial uses or operations, and shall be interpreted and construed to exclude any “heavy industry” or high impact industrial uses or operations, including, but not limited to, and for the purpose of providing examples only, smelting and ore refining processes, Natural Gas and/or Petroleum Extraction, Natural Gas and/or Petroleum Exploration, large-scale meat or poultry processing plants, coal or mineral processing or gasification operations, large-scale chemical and pharmaceutical processing plants, large-scale plastics or rubber manufacturing or extrusion processes, and similar operations and businesses.

**SECTION 5: GENERAL AND SPECIFIC ZONING ORDINANCE AMENDMENTS** – The following amendments are hereby made to the Town of Danby Zoning Ordinance:

A. A new § 517 is added as follows: “**Section 517 - PROHIBITION AGAINST THE EXPLORATION FOR OR EXTRACTION OF NATURAL GAS AND/OR PETROLEUM.** No use or operation on any land, parcel, lot, or other area located within the Town of Danby, including but not limited to within any Planned Development Zone, shall be proposed, allowed, or permitted where such use or operation involves: (i) any Natural Gas and/or Petroleum Exploration activities; (ii) storage or staging, for any length of time and whether above or below ground, any Natural Gas

and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes; or (iii) any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities; or (iv) any drilling, construction, or excavating of any well to find or produce any Natural Gas or other hydrocarbons, or (v) any storage, staging, processing, or treatment areas, structures, or improvements relating to Natural Gas, petroleum, or any related hydrocarbons, Natural Gas and/or Petroleum Exploration and Production Materials, or Natural Gas Exploration and/or Petroleum Production Wastes, or (vi) any disposal of Natural Gas Exploration and/or Petroleum Production Wastes, or (vii) the erection or construction of any derrick, building, or other structure, or placement or use of any machinery or equipment, for any such purposes. The above restrictions shall not be construed to: (a) prevent or prohibit the transmission of Natural Gas or related hydrocarbons through utility pipes, lines, or related appurtenances for the limited purpose of supplying utility services to residents of the Town of Danby; (b) prevent or prohibit the siting or permitting of a Gasoline Service Station or an Automotive and Other Motorized Vehicle Repair Facility where otherwise allowed under this Zoning Ordinance; or (c) prevent or prohibit the incidental and normal storage or use of reasonable and customary amounts of Natural Gas and other hydrocarbons in relation to any other use that is lawful under this Zoning Ordinance, such as home heating storage facilities (e.g., propane tanks), gasoline pumps and storage tanks, and similar uses that are normally associated with allowed residential, business, commercial, and Light Industrial uses permitted pursuant to and under this Zoning Ordinance.”

B. A new § 518 is added as follows: “**Section 518 – INVALIDITY OF OTHER GOVERNMENTAL PERMITS.** No permit issued by any local, state or federal agency, commission or board shall be deemed valid within the Town of Danby when such permit purports to allow or permit a land use or operation that would violate the prohibitions, terms, requirements, or conditions of this Zoning Ordinance.”

C. Section 604, entitled “**PLANNED DEVELOPMENT ZONES,**” is amended by replacing the first paragraph thereof with the following: “The purpose of the Planned Development Zone and the following regulations is to accommodate certain developments of land and buildings that are to be planned and executed as a unit, such as, but not limited to, large subdivisions, business parks (which may include Light Industrial uses, mobile home parks, and similar types of land uses, and to establish standards by which development in such zones shall occur.”

D. Section 702, entitled “**ENCLOSURE OF EXCAVATION SITES,**” is amended by adding the following clause at the end thereof: “This section shall not be construed to allow or permit any Natural Gas and/or Petroleum Exploration, any Natural Gas and/or Petroleum Extraction, or any Natural Gas and/or Petroleum Support Activities, and is intended to, and shall be deemed and construed to, apply only to extractive surface-based mining activities that seek to and actually extract only

naturally occurring rocks, sands, gravels and similar excavations and their overburdens.”

E. Section 703, entitled “**ABANDONMENT OF QUARRIES, ETC.,**” is amended by adding the following clause at the end thereof: “For the purposes of this Section 703, no reference to a quarry or to the extraction of natural resources shall include Natural Gas, any Natural Gas and/or Petroleum Exploration, any Natural Gas and/or Petroleum Extraction, or any Natural Gas and/or Petroleum Support Activities, and is intended to, and shall be deemed and construed to, apply only to extractive surface-based mining activities that seek to and actually extract only naturally occurring rocks, sands, gravels and similar excavations and their overburdens.”

F. Section 708 is amended in its entirety as follows: “**Section 708 – LIGHT INDUSTRIAL ESTABLISHMENTS.** Light Industrial uses and/or operations may only be allowed, established, or conducted within approved Planned Development Zones, except where otherwise permitted in a different Zone.”

**SECTION 6: CONSTRUCTION AND SUPERSESSION –** In their interpretation and application, the provisions and requirements of this Local Law (and of related provisions of the Zoning Ordinance) shall be held to be the minimum requirements so adopted for the promotion of the public health, safety, and welfare. Whenever the requirements of this Local Law are inconsistent with the requirements of any other Town of Danby laws, ordinances, rules, regulations or procedures, the more restrictive provision, or those imposing the higher standard, shall govern. The provisions of this Local Law shall supersede or repeal any prior inconsistent local law, ordinance, rule, regulation, or procedure of the Town of Danby that purports to allow or permit any Natural Gas and/or Petroleum Exploration, the storage, whether above or below ground, of any Natural Gas and/or Petroleum Exploration and Production Materials or any Natural Gas Exploration and/or Petroleum Production Wastes, the conduct of any Natural Gas and/or Petroleum Extraction activities or any Natural Gas and/or Petroleum Support Activities, or any other activity or operation seeking to otherwise drill or excavate any well to find or produce any Natural Gas or other hydrocarbons, or any other activity or operation seeking to erect any derrick, building, or other structure, whether permanent or non-permanent, or to place any machinery or equipment for any such purposes. Further, the Town of Danby hereby declares its intent to exercise its supersession authority under the Municipal Home Rule Law, to the greatest extent permitted by law, as regards the zoning power and the regulation and permitting of any Natural Gas and/or Petroleum Extraction activities and any Natural Gas and/or Petroleum Support Activities in the Town of Danby.

**SECTION 7: PARTIAL INVALIDITY AND SAVINGS –** If any part, clause, requirement, standard, or other provision of this Local Law, or the application thereof to any person or entity, or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in each such event, such judgment or declaration shall be confined in its interpretation and operation only to the part, clause, require-

ment, standard, or other provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment, declaration, invalidity, or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons, entities, or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed and the Town Board of the Town of Danby hereby declares that it would have enacted this Local Law and its Zoning Ordinance(s), or the remainders thereof, even if, as to such particular provisions, persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

SECTION 8: LIMITATION OF TOWN LIABILITY - The Town of Danby, and its employees, officers, and agents shall not be liable to or responsible for any injuries to any persons or entities for injuries, losses, or damages arising from or related to persons, property, or property or other rights in property due, in whole or in any part, to the Town's actions or failures to act under or pursuant to this Local Law or the Zoning Ordinance, unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town or its officers and agents. This Section 7, and its provisions, shall be construed and applied to the maximum extent permitted by law, and do not create any theory or claim of liability where none exists at law or in equity.

SECTION 9: EFFECTIVE DATE – This Local Law shall be and become effective immediately upon filing with the Secretary of State of the State of New York in accordance with the provisions of, *inter alia*, § 27 of the Municipal Home Rule Law.