

## MINUTES

Approved 1/3/09

### PLANNING, DEVELOPMENT, AND ENVIRONMENTAL QUALITY COMMITTEE

DECEMBER 2, 2008 3:45 P.M. COURTHOUSE CONFERENCE ROOM

Present: M. Robertson, Chair; P. Mackesey, F. Proto, C. Chock  
Excused: M. Sigler  
Staff: K. Fuller, Deputy Clerk of the Legislature; E. Marx, Planning and Public Works  
Commissioner; K. Borgella, Planning Department; M. Lynch, Public Information Officer  
Guest: Tim Ashmore, The Ithaca Journal

#### Call to Order

The meeting was called to order at 4:50 p.m.

#### Changes to Agenda

There were no changes to the agenda.

#### Appointment

It was MOVED by Ms. Mackesey, seconded by Ms. Chock, to recommend appointment of Frank Proto to the Tompkins Consolidated Area Transit Board of Directors for a term to expire December 31, 2011. Mr. Proto abstained from the vote.

A voice vote on the motion resulted as follows: Ayes – 3 (Legislators Chock, Mackesey, and Robertson); Excused – 1 (Legislators Sigler); Abstain – 1 (Legislator Proto). APPOINTMENT APPROVED.

#### **RESOLUTION NO. 252 - TOMPKINS COUNTY COMMENT ON NYSDEC DRAFT SCOPE FOR DRAFT SUPPLEMENTAL GENERIC ENVIRONMENTAL IMPACT STATEMENT (dSGEIS) ON THE OIL, GAS, AND SOLUTION MINING REGULATORY PROGRAM FOR THE MARCELLUS SHALE**

It was MOVED by Ms. Mackesey, seconded by Mr. Proto, and unanimously adopted by voice vote by members present, to recommend adoption of the following resolution to the full Legislature. RESOLUTION ADOPTED.

WHEREAS, compared to other fossil fuels, natural gas is a relatively clean, relatively low-impact source of energy that could replace the use of coal and other fuels that emit more greenhouse gases in a transition to a more sustainable energy future, and

WHEREAS, there has been gas drilling in New York State for more than 100 years in deposits that can be recovered by conventional means, but recent advancements in technology and increases in the price of energy have now made the extensive natural gas reserve in the Marcellus Shale potentially recoverable, and

WHEREAS, gas production from the Marcellus Shale is expected to be done using horizontal hydraulic fracturing (“fracking”), a technique that requires pressurized injection of millions of gallons of water containing certain proprietary chemicals into the underground shale to release the gas, but the sweeping 2005 Energy Policy Act exempted hydro-fracking from monitoring and regulation under the Safe Drinking Water Act, and

WHEREAS, if done in an environmentally responsible manner, development of the gas resources of Upstate New York could be of great economic benefit to landowners, municipalities, and New York State, and

WHEREAS, during the summer of 2008, Governor Paterson directed the New York State Department of Environmental Conservation (NYSDEC) to supplement the existing 1992 Generic Environmental Impact Statement governing drilling to specifically address the specific techniques used to tap the natural gas in the Marcellus Shale, and

WHEREAS, on October 6, 2008, the NYSDEC Division of Mineral Resources, Bureau of Oil and Gas Regulation, released the *Draft Scope for Draft Supplemental Generic Environmental Impact Statement (dSGEIS) on the Oil, Gas, and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs*, and

WHEREAS, the deadline for public comment on the scoping document of the Draft Supplemental GEIS (dSGEIS) is December 15, 2008, and

WHEREAS, Tompkins County and its municipalities have a responsibility to preserve and protect our natural resources, water resources, highway infrastructure, and quality of life for our residents, and

WHEREAS, New York State law clearly places land-use authority in the hands of its towns, villages, and cities, and

WHEREAS, the Tompkins County Planning Department and the Legislature's advisory boards are reviewing and preparing comments on the draft scope that will be submitted to NYSDEC separately, now therefore be it

RESOLVED, on recommendation of the Planning, Development, and Environmental Quality Committee, That the Tompkins County Legislature urges the New York State Department of Environmental Conservation to consider the following issues in its dSGEIS:

1. *The Scoping Document refers to NYSDEC's consideration of impacts on groundwater and surface water. We applaud NYSDEC for addressing these impacts and we emphasize the following concerns:* (a) surface water going into the deep shale forever or otherwise permanently being taken out of the water cycle, just as limited water resources are becoming a bigger issue worldwide, (b) surface water becoming more saline over time as the high-salinity water from the shales are added to our surface waters, (c) capacity limits of local wastewater treatment plants to handle the amount of salty and contaminated water (including total dissolved solids) proposed to be sent to them, and (d) disposal of produced water, and methods of dealing with the radioactivity and heavy metals in the formation water;
2. Section 4.1.1 (Noise Impacts) of the Scoping document identifies the need to mitigate some noise impacts. The dSGEIS should identify limits on noise allowed during drilling, pumping, and compression, as well as traffic of trucks and other heavy equipment, including hours of operation, particularly within proximity to homes, schools, hospitals, and other sensitive sites;
3. Section 4.2.3.3 (Erosion and Sediment Control) of the Scoping Document should address compliance with Stormwater Pollution Prevention Regulations, particularly in MS4 areas, for drilling sites, compression sites, and pipelines all of which should be governed by the same regulations at least as stringent as those required for other construction sites;
4. Section 4.7 (Cumulative Impacts) mentions that "water withdrawals are addressed by the Susquehanna and Delaware River Basin Commissions." However, some water withdrawals may occur within the Great Lakes Basin. A process for review of water withdrawals in the Great Lakes Basin should be established and should be as stringent as the review process for the Susquehanna River Basin Commission (SRBC). Specifically, review of water withdrawals must evaluate the cumulative amount of water intended to be used;
5. Section 4.7 (Cumulative Impacts) of the Scoping Document discusses cumulative surface disturbance impacts only in relation to individual sites. The dSGEIS should also address the cumulative impacts of drilling sites, compression sites, pipelines, and roads, on the fragmentation of the landscape, forests, and natural habitat, for the region as a whole, and over time (expected to last decades).

RESOLVED, further, That the Tompkins County Legislature urges the NYSDEC to consider the following additional factors when reviewing its regulatory program:

1. All relevant divisions of NYSDEC and other State agencies should be involved in evaluating the dSGEIS and writing the resulting regulations, including but not limited to the NYSDEC Divisions or Offices of Mineral Resources; Water Resources; Air Resources, Climate Change, and Energy; and Solid and Hazardous Materials;
2. All chemicals introduced into wells must be identified and the information shared with the public before use of such chemicals is permitted;
3. NYSDEC must regulate use of fracking chemicals, disposal of produced water, and methods of dealing with heavy metals in the formation water. These regulations must be reviewed annually, and revised if necessary, to ensure that they are kept up to date with the most current research and practice;
4. Well drillers should (a) be required to test wells at an appropriate distance from drill pads to ensure water quality, before, during, and after drilling, and (b) be required to go beyond the basic water testing and test for the chemicals they plan on using in the water for hydraulic fracturing of the shale as well as elements or compounds that could be brought to the surface from formation water;
5. NYSDEC should regulate traffic of trucks and other heavy equipment, including hours of operation, without precluding local regulation of local roads;
6. NYSDEC regulations must be available for public comment before going into effect;
7. NYSDEC should realistically calculate how many inspectors will be needed to adequately oversee all subject operations and request adequate funding or impose adequate fees on drilling companies before permitting is allowed to proceed; and
8. Local fire departments will need to have the capability to respond to accidents and spills; gas companies should be required to provide necessary training and resources.

RESOLVED, further, That since the burdens that will be placed on local communities' infrastructure and natural resources by extensive gas drilling will be borne by local governments, they should have the ability to tax such operations through an ad valorem tax on the value of the gas produced, or other taxing mechanism,

RESOLVED, further, That the Tompkins County Legislature urges the New York State Legislature to support H.R. 7231, a bill intended to repeal the exemption for hydraulic fracturing in the Safe Drinking Water Act,

RESOLVED, further, That, since adequate regulation and oversight by New York State Department of Conservation will cost significant State funds, New York State should enact a severance tax on gas drilling companies to pay the costs of such regulation and oversight,

RESOLVED, further, That a copy of this resolution shall be sent to Governor Paterson, Senators Skelos, Malcolm Smith, Winner, Seward, and Nozzolio, Speaker Silver, Assemblywoman Lifton, Chair of Senate Committee on Environmental Conservation Marcellino, Chair of Assembly Committee on Environmental Conservation Sweeney, Attorney General Cuomo, Representatives DeGette, Salazar, and Hinchey, New York State Association of Counties, and Town Supervisors and Clerks.

**SEQR ACTION:** TYPE II-20

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**RESOLUTION NO. - ADOPTION OF THE ENERGY AND GREENHOUSE GAS EMISSIONS ELEMENT AS AN AMENDMENT TO THE COUNTY COMPREHENSIVE PLAN**

It was MOVED by Ms. Mackesey, seconded by Mr. Proto. The Committee was informed the resolution was amended from the last meeting in order to more accurately reflect language contained in the original resolution adopting the Comprehensive Plan. It was clarified that the last two resolved paragraphs states that in the event of a conflict between one element and the balance of the plan the Legislature would make a determination of how to proceed. In addition, Ms. Borgella explained the

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language was crafted to ensure that more than one piece of the comprehensive plan be reviewed when making a decision regarding implementation.

A voice vote on the resolution resulted as follows: Ayes – 3 (Legislators Chock, Mackesey, and Robertson); Noes – 1 (Legislator Proto); Excused – 1 (Legislator Sigler). RESOLUTION ADOPTED.

Mr. Proto expressed his opinion that the last resolved is out of place, that it is not relating to the Energy and Greenhouse Gas, but rather to strengthen the entire plan. He believes that reference should be considered for the entire plan, not this segment. Ms. Robertson noted the language is parallel to the plan. They would discuss the topic further at a later time.

WHEREAS, in 2004, the Tompkins County Legislature adopted the Tompkins County Comprehensive Plan to guide County program development and decision making based on a community-defined vision of future growth and development in Tompkins County, and

WHEREAS, during the comprehensive planning process energy and greenhouse gas emissions were identified as important topics to be included in the Tompkins County Comprehensive Plan, but were delayed for study due to resource limitations at the time with the intention of studying and incorporating the topics as resources became available, and

WHEREAS, the Tompkins County Planning Department, with guidance and advice from the Tompkins County Planning Advisory Board and with significant participation from the Tompkins County Environmental Management Council, has developed an Energy and Greenhouse Gas Emissions element to be added to the Tompkins County Comprehensive Plan that addresses the local energy challenge, and

WHEREAS, the County has, through its Department of Planning, engaged in an extensive outreach effort to solicit public input and determine public support for the Energy and Greenhouse Gas Emissions element's Principles, Policies, and Action Items as a means for providing leadership and guiding decision making on energy and greenhouse gas emissions in the community, and

WHEREAS, the draft element was subject to wide-ranging opportunities for public review and comment, including four general public meetings and presentations to key community organizations, including the Chamber of Commerce, Tompkins County Council of Governments, and Tompkins County Climate Protection Initiative, and

WHEREAS, this element is based on current research undertaken by the Planning Department with outstanding assistance from many active groups, organizations, and individuals in the community, and

WHEREAS, the element promotes community-wide reduction in energy demand, improvements to energy efficiency, transition to renewable sources of energy, and the reduction of greenhouse gas emissions, and

WHEREAS, the element is not only consistent with the Tompkins County Comprehensive Plan but also supports other principles and policies of the County Comprehensive Plan, such as nodal development patterns, developing alternative transportation options, investing in local jobs and business opportunities, and protecting rural resources and natural features, and

WHEREAS, the Tompkins County Planning Advisory Board and Tompkins County Environmental Management Council have both passed resolutions recommending that the Legislature adopt the element as an amendment to the Tompkins County Comprehensive Plan, now therefore be it

RESOLVED, on recommendation of the Planning, Development and Environmental Quality Committee, That the Energy and Greenhouse Gas Emissions element is adopted as an amendment to the Tompkins County Comprehensive Plan,

RESOLVED, further, That the Energy and Greenhouse Gas Emissions Element, like the Tompkins County Comprehensive Plan itself, should be used in association with other factors, such as fiscal impacts, service delivery needs, and environmental impacts, to guide decision-making by the County,

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RESOLVED, further, That, when there is a perceived conflict between sections of the Comprehensive Plan, the Tompkins County Legislature intends that the Tompkins County Comprehensive Plan's Principles, Policies, and Action Items be used as a whole to evaluate the impacts of various actions.

**SEQR ACTION:** TYPE I-1

Negative Declaration and Full Environmental Assessment Form on file with the Clerk of the Legislature.

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On motion, the meeting adjourned at 5:07 p.m.

*Respectfully submitted by Karen Fuller, Deputy Clerk.*