

A Regular Meeting of the Town of Avon was held on Thursday, December 29, 2011 at 6:00 P.M. at the Avon Opera Block/Town Hall with the following members present:

PRESENT: Supervisor David LeFeber, Deputy Supervisor Kelly Cole, Councilmen Donald Cook, Thomas Mairs and James Blye

OTHERS: Attorney James Campbell, Town Engineer Timothy Rock, Highway Superintendent Thomas Crye, Water Superintendent Daniel McKeown, Code Enforcement Officer Anthony Cappello, and Town Clerk Sharon Knight

VISITORS: Councilman Elect Richard Steen, Claire Watson, Charlie Leonard, Mary Blye and Lisa Anderson

Supervisor LeFeber called the meeting to order at 6:00 P.M.

Pledge of Allegiance

Supervisor LeFeber asked for any public comments and there were none.

RESOLUTION #185 APPROVAL OF MINUTES

On motion of Councilman Cook, seconded by Councilman Blye the following resolution was

ADOPTED AYES 4 NAYS 0 ABSTAIN 1 (DEPUTY SUPERVISOR COLE)

RESOLVE to approve the minutes of December 8, 2011 as presented.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Abstain, Supervisor LeFeber - Aye

DISCUSSION – ATTORNEY REPORT

Attorney Jim Campbell reported on the following:

A copy of a draft local law was presented to the Board for their consideration. It is not an original work as many other towns are considering the same local law. He stated the proposed law needs to be in the hands of the Board ten days prior to the public hearing. The Attorney will forward to the County Planning Board and the Town Clerk will forward to the neighboring communities. SEQR is not required for this local law. If a moratorium is enacted, an action plan on how the Board will educate themselves will be required. The suggestion of appointing a sub-committee was discussed. The Town of Dryden is being sued by the gas companies as they are claiming the community does not have a right to ban as the State has exclusive authority. The law we are considering is to simply consider a moratorium to provide more time to become better educated.

DISCUSSION – ATTORNEY REPORT-continued

In the Town of Millbury a farmer is suing the town as he believes the moratorium is violating his rights due to the ban. It's expected that both of these suits are expected to be appealed.

The Town of Avon is not standing alone as there are many other Towns taking the same type of action.

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012

On motion of Deputy Supervisor Cole, seconded by Councilman Cook the following resolution was
ADOPTED AYES 5 NAYS 0

RESOLVE to accept the following draft of Local Law T-2A-2011 and schedule a Public Hearing on January 26, 2012 at 7:00 P.M.:

TOWN OF AVON LOCAL LAW NO. ____ OF 2012

A local law to effect a Moratorium and Prohibition within the Town of Avon, Livingston County, New York (hereinafter "Town"), of Natural Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes.

BE IT ENACTED by the Town Board of the Town of Avon, Livingston County, New York, as follows:

Section 1. Title

This Local Law shall be known as the "Moratorium on and Prohibition of Gas and Petroleum Exploration and Extraction Activities, Underground Storage of Natural Gas, and Disposal of Natural Gas or Petroleum Extraction, Exploration and Production Wastes."

Section 2. Authority and Intent; Findings; Purpose

- A. Authority and Intent – This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the Town Board of the Town of Avon under the New York State Constitution, and the Laws of the State of New York, including but not limited to the following authorities: New York State Constitution Article IX, Section 2 (c)(ii)(6), (10); Municipal Home Rule Law § 10(1)(i); Municipal Home Rule Law § 10(1)(ii)(a)(6), (11), (12), and (14); Municipal Home Rule Law § 10(1)(ii)(d)(3); Municipal Home Rule Law § 10(2); Municipal Home Rule Law § 10(3); Municipal Home Rule Law § 10(4)(a), and (b); Statute of

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

Local Governments §10(1), (6), and (7); Town Law § 64 (17-a), (20-b), and (23); Town Law § 130(5), (6), (7), (8), (11), (14), (15), and (23); Town Law §135; Town Law Article 16 (Zoning & Planning) inclusive; Environmental Conservation Law § 17-1101, §27-0711; and New York State Law, Public Health Law § 228 (2), and (3).

This Law is a police power and land use regulation. This Law is intended and is hereby declared to address matters of local concern, and it is declared that it is not the intention of the Town to address matters of statewide concern. This Local Law is intended to act as and is hereby declared to exercise the permissive “incidental control” of a zoning law and land use law that is concerned with the broad area of land use planning and the physical use of land and property within the Town, including the physical externalities associated with certain land uses, such as negative impacts on roadways and traffic congestion and other deleterious impacts on a community.

B. Findings of Fact - The Town makes the following Findings of Fact relating to this Local Law:

1. Avon is a community in the northern part of Livingston County that takes great pride in and assigns great value to its rural residential character, small-town atmosphere, fine agricultural lands, and cultural, recreational, scenic and other natural resources. Avon attracts a significant number of yearly visitors. Avon seeks to attract even more visitors, and that strategy has the potential to be a significant economic development driver, provided that Avon protects its scenic and other natural resources and does not instead devote its open space to industrial-scale gas extraction drilling and associated industrial activities.
2. Many residents are dependent upon aquifers and wells for life-sustaining water; maintaining the quality of water resources within the Town is critical to protecting the natural environment of the Town, the general health and welfare of Town residents, and the local economy.
3. Preservation of the Town’s irreplaceable recreational and scenic sites, high-quality agricultural land, air quality and water quality, and priceless and unique character, is of significant value to the inhabitants of the Town and to the tourists who visit here.

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

4. The Town's rich natural environment is a valuable asset that creates a sense of identity and well-being for residents of the area. Preserving and protecting the scenic, recreational, and other natural resources of the Town is important for both a healthy environment and vibrant economy. Aesthetic issues are real and evoke strong reactions from people. They deeply affect the way people feel about a place – whether or not businesses will want to locate, or people will want to live in and visit a place.
5. Allowing the activities prohibited by Section 4. of the Local Law would impair the existing character of the Town, because by their very nature such activities have the potential to produce a combination of negative impacts upon the environment and people living in or in proximity to the communities in which they are located. Such negative impacts may include, without limitation, traffic, noise, vibrations, fumes, damage to roadways, degradation of water quality, degradation of air quality, decreased availability of affordable housing, damage to and loss of agricultural lands and soils, damage to and loss of open space, natural areas, and scenic views, decreased recreational opportunities, and damage to the tourism industries.
6. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, traffic generated thereby could be hazardous or inconvenient to the inhabitants of the Town and could be dangerous to pedestrians (especially children), cyclists, and motorists, and could result in traffic congestion that could delay emergency response times for medical emergencies, fires and accidents. Roads are a critical public resource and constitute a major investment of the public's money. The Town is not in a position to bear the high costs associated with the road use impacts that accompany many of the activities prohibited by Section 4. of the Local Law. Accidents involving heavy trucks have greater potential for death than those involving smaller vehicles. Increased truck traffic increases air pollution and noise levels, and decreases the quality of life and property values for those living nearby.
7. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, the air pollution, dust and odors generated thereby (whether onsite or by truck traffic to and from the proposed site of such activities) could be hazardous or inconvenient to the inhabitants of the Town. Air pollution is a known hazard to the public health.

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

8. Allowing one or more of the activities prohibited by Section 4. of the Local Law to be conducted within the Town could negatively impact the quality of water resources within the Town. Water pollution is hazardous to the public health. If a domestic water source is contaminated, remediation is time and cost intensive, and may not restore the water resource to a quality acceptable for domestic use.
9. If one or more of the activities prohibited by Section 4. of the Local Law are conducted within the Town, noise, vibrations, and light pollution typically caused by such Activities could be hazardous or inconvenient to the inhabitants of the Town, Noise, traffic congestion, nighttime lighting, and vibration can have negative effects on human health and wildlife.
10. The creation, generation, keeping, storage or disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) within the Town could have a negative impact on the public health, safety and welfare of the inhabitants of the Town.
11. The high costs associated with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as that term is defined at Section 3. of the Local Law) could in our Town result, in persons seeking to avoid such costs by depositing such material along roadways, in vacant lots, on business sites, in the private dumpsters of others, or in other unauthorized places. Such activities could pose a hazard to the public health, safety, and welfare of the inhabitants of the Town.
12. The explicit proscription of the activities prohibited by Section 4. of the Local Law is a legitimate goal of land use laws. There is no question that exclusion of specified industrial is a legitimate goal of such laws:

As the United States Supreme Court stated in *Town of Belle Terre v. Borass*, 416 U.S. 1 (1974):

the concept of public welfare is broad and inclusive... The values that it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the [local] legislature to determine that the community should be beautiful as well as

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

healthy, spacious as well as clean, well-balanced as well as carefully patrolled. 416 U.S. at 6.

And see also *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y. 2d 668 (1996), where the Court of Appeals, New York State's highest court, evaluated a claim that a town's prohibition of mining throughout the town was in effect unconstitutional 'exclusionary zoning' and held as follows:

*We have never held, however, that the ... ['exclusionary zoning'] test, which is intended to prevent a municipality from improperly using the zoning power to keep people out, also applies to prevent the exclusion of industrial uses. **A municipality is not obliged to permit the exploitation of any and all natural resources within the town as a permitted use if limiting that use is a reasonable exercise of its police power to prevent damage to the rights of others and to promote the interests of the community as a whole.** 87 N.Y. 2d at 683, 684. (emphasis added.)*

- C. Purpose - The purpose of the Local Law is to enable the Town of Avon to stay the construction, operation, and establishment of, and the submission and processing of applications for permits, zoning permits, special permits, zoning variances, building permits, operating permits, site plan approvals, subdivision approvals, certificates of occupancy, certificates of compliance, temporary certificates, and other Town-level approvals respecting, the activities prohibited by Section 4. of the Local Law, for a reasonable time, so as to allow the Town time to study the impacts, effects, and possible controls over such activities and to consider amendments to the Town's zoning laws to address the same. The Town Board finds that a moratorium of twelve (12) months duration, coupled with a mechanism for an 'unnecessary hardship' variance procedure, will achieve an appropriate balancing of interests between (on the one hand) the public need to safeguard the character and other resources of the Town of Avon and the health, safety and general welfare of its residents, and the rights of individual property owners or businesses desiring to conduct such activities (on the other) during such period.

Section 3. Definitions

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

For purposes of this Local Law, the following terms shall have the meanings respectively set forth below:

Agriculture Use - Land used for the production of crops and/or livestock and livestock products (as those terms are defined at Section 301 of the New York State Agriculture and Markets Law).

Below-Regulatory Concern – Radioactive material in a quantity or of a level that is distinguishable from background (as that phrase is defined at 10 CFR §20.1003), but which is below the regulation threshold established by any regulatory agency otherwise having jurisdiction over such material in the Town.

Gathering Line, Or Production Line - Any system of pipelines (and other equipment such as drip stations, vent stations, pigging facilities, valve box, transfer pump station, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), used to move oil, gas, or liquids from a point of production, treatment facility or storage area to a transmission line, which is exempt from the Federal Energy Regulatory Commission's jurisdiction under section 1(b) of the Natural Gas Act, and which does not meet the definition of a "Major utility transmission facility" under the Public Service Law of New York, Article 7, §120(2)(b).

Injection Well – A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and ninety (90) percent or more of such fluids do not return to the surface within a period of ninety (90) days. The definition of Injection Well does not include: (a) single family septic systems that receive solely residential waste; (b) drainage wells used to drain surface fluids, primarily storm runoff, into the ground; (c) geothermal wells associated with the recovery of geothermal energy for heating or production of electric power; or (d) bore holes drilled to produce water to be used as such.

Land Application Facility – A site where any Natural Gas Exploration and/or Petroleum Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

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

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

gaseous or rarefied state at standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons.

Natural Gas and/or Petroleum Exploration Activities – 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, *but only to the extent* that such activities involve or employ core, rotary, or any other type of drilling or otherwise making any penetration or excavation of any land or water surface in the search for and evaluation of natural gas, petroleum, or other subsurface hydrocarbon deposits.

Natural Gas and/or Petroleum Extraction Activities – 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.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes – Any of the following in any form, and *whether or not* such items 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 whether or not such substances are generally characterized as waste: (a) below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c) natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, productions or treatment of natural gas or petroleum. This definition 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). The definition of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by Agriculture Use.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility – Any of the following: (a) tanks of any construction (metal,

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling, (iii) are being held for treatment, or (iv) are being held for storage.

Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump – Land upon which Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

Natural Gas and/or Petroleum Support Activities – Shall mean and be any one or more of the following: (a) Natural Gas Compression Facility; (b) Natural Gas Processing Facility; (c) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Disposal/Storage Facility; (d) Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes Dump; (e) Land Application Facility; (f) Non-Regulated Pipelines; (g) Underground Injection; or (h) Underground Natural Gas Storage.

Natural Gas Compression Facility – Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

Natural Gas Processing Facility – Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gases and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration, residual refinement, treating or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams.

Non-Regulated Pipelines – Those pipelines that are exempt or otherwise excluded from regulation under federal and state laws regarding pipeline construction standards or reporting requirements. Specifically includes production lines and gathering lines.

Person – Any individual, public or private corporation for profit or not for profit, association, partnership, limited liability company, limited liability partnership, firm, trust, estate, and any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

Pipeline – All parts of those physical facilities through which petroleum, gas, hazardous liquids, or chemicals move in transportation (including pipes, valves and other equipment and appurtenances attached to pipes and other equipment such as drip stations, vent stations, pigging facilities, valve boxes, transfer pump stations, measuring and regulating equipment, yard and station piping, and cathodic protection equipment), whether or not laid in public or private easement or private right of way within the Town. This includes, without limitation, gathering lines, production lines, and transmission lines.

Radioactive Material – Material in any form that emits radiation, but only if such material has been moved from its naturally occurring location through an industrial process. Such material is “radioactive material” for purposes hereof, *whether or not* it is otherwise exempt from licensing and regulatory control pursuant to the NYS Department of Labor, the US Nuclear Regulatory Commission, the US Environmental Protection Agency, the US Department of Energy, the US Department of Transportation, or any other regulatory agency.

Radiation – The spontaneous emission of particles (alpha, beta, neutrons) or photons (gamma) from the nucleus of unstable atoms as a result of radioactive decay.

Subsurface – Below the surface of the earth, or of a body of water, as the context may require.

Town – The Town of Avon, Livingston County, New York.

Transmission Line – A pipeline that transports oil, gas, or water to end users as a public utility and which is subject to regulation either by: (a) the Federal Energy Regulatory Commission’s jurisdiction under section 1(b) of the Natural Gas Act, or (b) as a “Major utility transmission facility” under the Public Service Law of New York, Article 7, §120(2)(b).

Underground Injection – Subsurface emplacement of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

Underground Natural Gas and Storage – Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.

Section 4. Moratorium and Prohibition.

- A. From and after the date of this Local Law, no application for a permit, zoning permit, special permit, zoning variance, building permit, operating

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

- B. permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance temporary certificate, or other Town-level approval shall be accepted, processed, approved, approved conditionally, or issued for the construction, establishment, or use or operation of any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

- C.
 - 1. From and after the date of this Local Law, no Person shall use, cause, or permit to be used, any land, body of water, building, or other structure located within the Town for any of the following: (i) any Natural Gas and/or Petroleum Exploration Activities; (ii) any Natural Gas and/or Petroleum Extraction Activities; or (iii) any Natural Gas and/or Petroleum Support Activities.

 - 2. The prohibitions set forth above in Clause 1. of this Section 4.B. are not intended, and shall not be construed, to: (a) prevent or prohibit the transmission of natural gas through utility pipes, lines, or related appurtenances for the limited purpose of supplying natural gas utility services to residents of or buildings located in the Town; or (b) prevent or prohibit the incidental or normal sale, storage or use of lubricating oil, heating oil, gasoline, diesel fuel, kerosene, or propane in connection with legal Agriculture, residential, business, commercial, and other uses within the Town, so long as such uses do not involve any Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, or Natural Gas and/or Petroleum Support Activities.

- D. This moratorium and prohibition shall be in effect beginning on the effective date of this Local Law and shall expire on the earlier of (i) that date which is twelve (12) months after said effective date; or (ii) the effective date of a Town Board resolution affirmatively stating the Town Board has determined that the need for this moratorium and prohibition no longer exists.

- E. This moratorium and prohibition shall apply to all real property within the Town.

- F. Under no circumstances shall the failure of the Town Board of the Town, the Zoning Board of Appeals of the Town, the Planning Board of the Town, or the Code Enforcement Officer for the Town to take any action

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

upon any application for a permit, zoning permit, special permit, zoning variance, building permit, operating permit, site plan approval, subdivision approval, certificate of occupancy, certificate of compliance, temporary certificate, or other Town-level approval constitute an approval by default or an approval by virtue of expiration of time to respond to such application.

Section 5. Penalties.

- A. Failure to comply with any of the provisions of this Local Law shall be an unclassified misdemeanor as contemplated by Article 10 and Section 80.05 of the New York State Penal Law, and, upon conviction thereof, shall be punishable by a fine of not more than One Thousand Five Hundred Dollars (\$1,500) or imprisonment for not more than 10 days, or both for the first offense. Any subsequent offense within a three-month period shall be punishable by a fine of not more than Two Thousand Five Hundred Dollars (\$2,500) or imprisonment for a period of not more than 30 days, or both. For purposes of this Clause A., each day that a violation of this Local Law exists shall constitute a separate and distinct offense.
- B. Compliance with this Local Law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction, in an action brought on behalf of the Town by the Town Board.
- C. In the event the Town is required to take legal action to enforce this Local Law, the violator will be responsible for any and all necessary costs incurred by the Town relative thereto, including attorney's fees, and such amount shall be determined and assessed by the court. If such expense is not paid in full within 30 days from the date it is determined and assessed by the Court, such expense shall be charged to the propert(ies) within the Town on which the violation occurred, by including such expense in the next annual Town tax levy against such property, and such expense shall be a lien upon such property until paid.

Section 6. 'Grandfathering' of Legal, Pre-existing Non-Conforming Use

Notwithstanding any provision hereof the contrary, any Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law shall be subject to the following:

- A. 1. Where, as of the effective date of this Local Law, substantive Natural Gas and/or Petroleum Extraction Activities are occurring

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

in the Town, and those activities are in all respects being conducted in accordance with all applicable laws and regulations, including without limitation all permits required to be issued by the New York State Department of Environmental Conservation ("DEC") and all other regulating agencies, then and only then such Activity shall be considered a pre-existing, non-conforming use and shall be allowed to continue, subject, however, to the provisions of Clauses B. and C. of this Section 6.

2. Natural Gas and/or Petroleum Extraction Activities that are being conducted in the Town as of the effective date of this Local Law and which do not qualify for treatment under the preceding Clause A.1. of this Section 6 shall not be grandfathered, and shall in all respects be prohibited as contemplated by Section 4 hereof.
- B. Upon the depletion of any well which is allowed to remain in operation after the effective date of this Local Law by virtue of Clause A.1. of this Section 6, or upon any other substantive cessation of Natural Gas and/or Petroleum Extraction Activities (otherwise grandfathered by virtue of Clause A.1. of this Section 6) for a period of more than twelve (12) months, then and in such event the non-conforming use status of such Activity shall terminate, and thereafter such Natural Gas and/or Petroleum Extraction Activities shall in all respects be prohibited as contemplated by Section 4 hereof.
- C. Notwithstanding any provision hereof to the contrary, the pre-existing, non-conforming status conferred and recognized by Clause A.1. of this Section 6 is not intended, and shall not be construed, to authorize or grandfather any Natural Gas and/or Petroleum Extraction Activities extending beyond whatever well bore is authorized in any DEC permit in existence as of the effective date of this Local Law. Any expansion or attempted or purported expansion shall not be grandfathered under Clause A.1. of this Section 6, and instead shall in all respects be prohibited as contemplated by Section 4 hereof.

Section 7. Invalidity of any Conflicting Approvals or Permits.

No permit or approval issued by any local or state agency, department, commission or board shall be deemed valid within the Town of Avon when or to the extent that such permit or approval purports to allow or permit any activity that would violate the prohibitions set forth at Section 4 of this Local Law.

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

Section 8. Hardship Use Variance.

The Zoning Board of Appeals of the Town is hereby authorized to accept and review (after public notice and hearing and in accordance with the requirements of law and of this Local Law) requests for a hardship use variance from application of the provisions of this Local Law by persons aggrieved hereby.

No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship.

- A. Unnecessary Hardship. In order to prove such unnecessary hardship the applicant is required to demonstrate to the Zoning Board of Appeals that, with respect to every permitted use under the zoning regulations for the particular district where the property is located, each of the following four criteria is satisfied: (i) the applicant cannot realize a reasonable return on the entire parcel of property, and such lack of return is substantial as demonstrated by competent financial evidence; (ii) the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; (iii) the requested use variance, if granted, will not alter the essential character of the rural, hamlet, or other neighborhood; and (iv) the alleged hardship has not been self-created.
- B. Reasonable Rate of Return. In evaluating whether the applicant can realize a reasonable rate of return, the Zoning Board of Appeals must examine whether the entire original or expanded property holdings of the applicant are incapable of producing a reasonable rate of return (and not just the site of the proposed development project). No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the applicant has clearly demonstrated, by detailed "dollars and cents" proof, the inability to obtain a reasonable return for the entire parcel (and not just the site of the proposed project) and for each and every permitted use in the district (including those uses permitted by special use permit).
- C. Unique Hardship. No use variance shall be granted unless, in addition to satisfying all other applicable provisions of law and this Law, the Zoning Board of Appeals finds that the entire parcel of which the project is a part possesses unique characteristics that distinguish it from other properties in the area.
- D. Essential Character of the Neighborhood. In making the determination of whether the proposed development project will alter the essential character

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

of the neighborhood, the Zoning Board of Appeals shall take into account factors that are of vital importance to the citizens of the Town including without limitation: (i) the rural residential and agricultural character of the Town, (ii) its irreplaceable recreation and tourism sites, (iii) the extent of hazard to life, limb or property may result from the proposed development project, (iv) health impacts, (v) the social and economic impacts of traffic congestion, noise, dust, odors, emissions, solid waste generation and other nuisances, (vi) the impact on property values, and (vii) whether the applicant will engage in a type of development that will result in degradation to the air quality, water quality, and environment of the Town. In order to find that the proposed development project does not alter the essential character of the neighborhood, the Zoning Board of Appeals shall interpret the public interest in said essential character of the neighborhood to require, at a minimum, that the project will not do any of the following: (a) pose a threat to the public safety, including public health, water quality or air quality, (b) cause an extraordinary public expense, or (c) create a nuisance.

- E. Self-Created Hardship. The Zoning Board of Appeals may find that the applicant suffers from a self-created hardship in the event that the Board finds that (i) the applicant's inability to obtain a reasonable return on the property as a whole results from having paid too much or from a poor investment decision; (ii) the applicant previously divided the property and is left with only a portion which suffers from some unique condition for which relief is sought and which did not apply to the parcel as a whole; or (iii) when the applicant purchased the property, he or she knew or should have known the property was subject to the zoning restrictions.

In the event the Zoning Board of Appeals grants a hardship use variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's then applicable zoning laws and other laws and regulations, together with any amendments to such law or regulations which may be enacted during the term of this Local Law. Any hardship use variance that is granted shall grant only the minimum variance that the Board of Appeals deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 9. Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its

RESOLUTION #186 ACCEPT DRAFT OF LOCAL LAW T-2A-2012-continued

interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of 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 or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be and be deemed severed herefrom, and the Town Board of the Town hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

Section 10. Superseding Intent and Effect.

During the time this Local Law is in effect, it is the specific intent of the Town Board, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3) and §22, to supercede: (a) any inconsistent provisions set forth in Town Law § 265-a; § 267; § 267-a, § 267-b, § 268; § 274-a, § 274-b; § 276, § 277, § 278, and § 279; (b) any other inconsistent provisions set forth in Article 16 of the Town Law; (c) any inconsistent provisions of the Zoning Code of the Town of Avon; and (d) any inconsistent provisions of any and all other local ordinances, local laws or local resolutions of the Town of Avon.

Section 11. Effective Date.

This Local Law shall take effect immediately upon filing with the New York Department of State.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

DISCUSSION CONTRACT WITH EASTERN XEROX

Deputy Supervisor Cole questioned if Eastern was upholding their portion on the signed contract. He stated the Court had removed the Muratec copier and questioned where it went. Supervisor LeFeber stated he gave permission to have Hurricane set it up in the Town Clerk's Office. Town Clerk Knight stated the copier is working well in her Department and that the last copier that was given to her from the Court had begun to make grinding sounds. Deputy Supervisor Cole stated that Assessor Tami Snyder was collecting information from all Departments of problems they were having. Attorney Campbell stated that there are normally provisions for specific items including response time. The local representative has left the company with unresolved Town issues. Town Clerk Knight stated that she has concerns of the billing and continues to work at having them resolved. Attorney Campbell asked the Town Clerk to gather information and they would review.

DISCUSSION – HIGHWAY REPORT

Highway Superintendent Thomas Crye reported his department has finished hedge rows, all ditching has been completed, they have been on a couple of salt runs and they are working in the shop.

Supervisor LeFeber stated that new income reporting laws have been adopted that will require the Town to include benefits provided to employees on their W2 Statements. Attorney Campbell will review the newly adopted laws and make recommendations at a future meeting.

DISCUSSION - ENGINEERING REPORT

Engineer Rock reported on the following:

He attended a meeting for discussion on the improvements to Tec Drive.

There was a lengthy discussion on the proposed ways to proceed on the needed improvements to the culver on Littleville Road.

Photos were shared with those in attendance that were taken in May and then again in November.

The DEC has a water body inventory of Creeks and Little Conesus Creek is not a part of their inventory; therefore, an assessment must be completed prior to considering issuing a permit. The assessment will take 2 to 3 months and will delay our project.

The application needs to be completed prior to the assessment. Several concepts were shared that included four different proposals with similar costs. By the end of January a decision will need to be made on the proposed plan. The DEC may or may not approve the plan.

The project will require bidding.

The project is being planned to protect the road and water lines. Attorney Campbell questioned if the stream is going to be fixed for the benefit of the private property.

Supervisor LeFeber discussed a needed timeline to get the funding from FEMA. The homeowners on each side of the culvert do not want to make a change and the Town's interest is to complete work. Making improvements to private property is a concern.

Mr. Lee will be invited to a future meeting.

DISCUSSION ASHANTEE PLANNED DEVELOPMENT DISTRICT

Supervisor LeFeber will be scheduling Developer Helge Heen and his Attorney Chip Presutti to attend the January 12th Town Board Meeting to discuss his proposal. Invitations to the Planning Board will be extended. On the 26th our insurance representative will be in attendance.

DISCUSSION – WATER REPORT

Water Superintendent McKeown reported he has been completing normal maintenance including odd painting.

DISCUSSION CODE ENFORCEMENT OFFICER

Code Enforcement Officer Anthony Cappello reported on the following:

The New York State Department of Conservation was involved prior to issuing building permits for the additions on Mr. Louis Lee's property located on Jones Lane. The concrete was poured prior to inspections.

Elmer Davis noticed the hatch on the roof is in need of replacement. Deputy Supervisor Cole stated that the hatch is no longer needed and we should just board up the old hatch. Both labor and materials would be less than \$1,000.00. Access to the roof is in the stair tower.

We have received Planning Board complaints of Car dealerships use of flags and such. A letter including a copy of the Town of Avon Code will be sent.

There are questions on the special use permit that was issued to K&W in East Avon. It appears that the business is a full blown repair garage. It is recommended that modifications to the plans or the property are needed.

RESOLUTION #187 PAYMENT OF BILLS

On motion of Deputy Supervisor Cole, seconded by Councilman Blye the following resolution was

ADOPTED AYES 5 NAYS 0

RESOLVE to accept for payment Abstract 2011-24 in the following amounts:

Concerning ABSTRACT of Claims Number 2011-24 including claims as follows:

General Fund	Voucher #532 through #563 in amounts totaling \$15,317.62
Highway Fund	Voucher #215 through #233 in amounts totaling \$12,859.26
Water Fund	Voucher #183 through #189 in amounts totaling \$793.81
Cemetery Fund	No Voucher
Opera Block Capital	
Improvement	No Voucher
Royal Springs Lighting	No Voucher

RESOLUTION #187 PAYMENT OF BILLS-continued

Cross Roads Drainage District	No Voucher
Bruckel Drainage District	No Voucher
Royal Springs Drainage	No Voucher
Town Of Avon Fire Protection	No Voucher
Water Capital Improvement	No Voucher

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

DISCUSSION - BUDGET TRANSFERS

Supervisor LeFeber stated that the budget transfers were provided by e-mail and Deputy Supervisor Cole questioned if he had received the e-mail. After checking it was in fact received and he then reviewed the transfers. Supervisor LeFeber stated that he is responsible to provide it and knew it had been sent. Discussion included the large amount that needed to be transferred to balance the Clerks in the Court.

RESOLUTION #188 BUDGET TRANSFERS

On motion of Councilman Blye, seconded by Councilman Cook the following resolution was
ADOPTED AYES 5 NAYS 0

RESOLVE to approve budget transfers as provided through e-mail.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

DISCUSSION COUNTY EQUIPMENT AGREEMENT

Supervisor LeFeber stated the County is in need of a copy of the 2012 insurance certificate.

RESOLUTION #189 COUNTY EQUIPMENT AGREEMENT

On motion of Councilman Mairs, seconded by Councilman Blye the following resolution was
ADOPTED AYES 5 NAYS 0

RESOLVE to approve the Livingston County Equipment Agreement.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

**DISCUSSION PLANNING BOARD AND ZONING BOARD OF APPEALS
TRAINING REQUIREMENT**

Supervisor LeFeber stated that Town Clerk Knight asked that the Board discuss their interest in the number of educational hours of Planning Board and Zoning Board of Appeals Members have taken. Town Clerk Knight is looking for direction regarding keeping track of hours. She questioned if the Board was only interested in the hours in the year prior to re-appointment, and how many hours the Board was allowing Members to carry over. Deputy Supervisor Cole stated that it sounds like the role of the Personnel Clerk. Supervisor LeFeber stated that he and Councilman Blye interview for re-appointments and they look to see if someone has the hours for the current year and if not they are not reappointed. He suggested the Clerk or her staff not expand the time need to keep tract. Town Clerk Knight stated it's her job to keep track and will continue to perform her job. She was questioning if the Board still wanted to allow carry overs and if there was a limit. For example Zoning Board Chairman Robert Westfall has over forty hours, so does the Board consider him meeting the requirement for the next ten years. Does the Board want that type of detail?

There was a lengthy discussion of the draft Employee Handbook and the areas in which the Board needs to make decisions. Items included the following:

no longer allowing for sick and vacation days to be accumulated was discussed due to the burdens on the Town. Floating holidays.

adding two floating holidays and deciding of the specific dates at the organizational meeting.

Representatives will be asked to come back and present the handbook.

Water Superintendent McKeown shared his thoughts including his displeasure with taking away seven days as he could not take days off and the amount of compensation time accumulated could never be used.

RESOLUTION #190 ADOPT EMPLOYEE HANDBOOK

On motion of Councilman Blye, seconded by Councilman Mairs the following resolution was

ADOPTED AYES 5 NAYS 0

RESOLVE to adopt the Employee Handbook that includes the following items that were discussed:

Required physical exams for highway and water new hires, department head performance review, vehicle usage, drivers license using the lens program, floating holidays, sick and vacation time carry over. A representative will attend an employee meeting for review.

RESOLUTION #190 ADOPT EMPLOYEE HANDBOOK-continued

FURTHER, BE IT RESOLVED that the previous handbook is terminated and they will have the final version printed and provided to the employees.

Vote of the Board: Councilman Blye - Aye, Councilman Mairs – Aye, Councilman Cook - Aye, Deputy Supervisor Cole - Aye, Supervisor LeFeber - Aye

DISCUSSION – SUPERVISOR REPORT

Supervisor LeFeber reported a list of holiday season goods were provided by Larsen Engineer, East Avon Fire Department, Ambulance and Frank Csapo.

A letter of appeal was received from the Town Clerk and an investigation of the County determined that the only employees paid for lunch are some nurses, as they are required to have their lunch in the building. We do not meet that criteria. The Board appeared to agree to unpaid lunches. Supervisor LeFeber stated that he notified another employee that works for two departments of the change.

Not being fully award of the labor law was the cause of the previous paid lunch.

Both Supervisor LeFeber and Councilman Mairs stated that people should open their own mail.

DISCUSSION – PRESENTATION OF APPRECIATION OF SERVICE

Councilman Mairs stated that Deputy Supervisor Cole and Councilman Cook have done an excellent job and that he wishes them good luck, and that it has been a pleasure working with them.

Supervisor LeFeber presented a plaque and read the following:

On behalf of the residents of Town of Avon and myself, I would like to thank Don Cook and Kelly Cole for their service to the Town. Both have spent 12 years gathering information, reporting to the Board and being part of the decision making process. Being a board of five people, at times the outcome was not always agreed to by all. After a Board decision Kelly and Don worked with other elected officials, town employees as well as people that the Town hired to put the action plan in place. At times we had to regroup and modify plans to in order to move forward and enable us to produce the best end result. The people of Avon have benefitted from this approach of doing business. I feel the Town and Village have cooperated on several ventures to promote Avon and create a healthy community spirit.

The water department has benefitted greatly with the implementation of the water contract in 2001. With the Water Works Committee which Don has been a member of since its inception, the Town has had a stable price of water. This has allowed the Town to maintain our water rate to the residents. During this period

DISCUSSION – PRESENTATION OF APPRECIATION OF SERVICE-continued

the tower and tank have been put in a maintainable state, painted and are both in good condition. In 2004 a capital project was completed to provide all resident users an adequate pressure, proper metering of purchased water and an upgrade of transmission lines. The South Avon water system built after the salt mine collapse was settled to the point of the Town providing metered water and working with Livingston County to maintain the system. A meter and hydrant replacement policy was created as well as the recent addition of radio reads meters being added. Water main replacement and additions and improvements to Henty, Darby, North Littleville Roads and Jones Lane have occurred. In 2010, working closely residents on Route 39 and Hogmire Road, transmission lines were put in. This projected completion relied on a \$488,000 grant and low cost loan from the federal government. Today, the system run by Dan McKeown, Mary Blye with support from Larsen Engineers and the Village of Avon is in very good condition.

One item that was the most frequent agenda item for this time period was the Town Hall/ Opera Block project renovation project. I initially asked Don and Kelly to gather information to work toward providing the Town with a new site to conduct business. They visited several sites, considered a new building and spent time exploring all of the various options. The option of choice was to purchase the building next to the Town Hall and rehabilitate both buildings. This would allow us to address space and handicap accessibility restraints as well as to keep us in a central location in the Village. Kelly was the lead person on the project holding and organizing public meetings and working closely with the Clerk of the Works, Jim Biondolillo and all of the various contractors. Don coordinated our temporary location and move. The Village provided us with meeting space and a Town Court office. The outcome has provided us a building postured for the future, our innovative geothermal heating and cooling system works well, the building provides us space for growth and houses the Historical society. The project was completed on time and on budget. The Town was the recipient of grant dollars to aid in the rehabilitation. As it turns out, being awarded a grant is the easy part. Collecting and justifying the use of the money is quite involved. Kelly, working with Mary Blye, accomplished collection of all of the awarded dollars which were \$1.8 million of the three million dollar project. With favorable interest rates available at the time of bonding, the project will be paid off in ten years utilizing less taxpayer dollars than were authorized by the voters.

Over the years, hundreds of other decisions have had to be made. Decisions about employee salaries, benefits, equipment purchases, IT policies and responses to resident inquiries have been addressed after careful and thoughtful consideration. The Board took over several programs and services such as the Youth recreation program and clean up days.

Zoning and future planning is also a charge of the Board. Selecting members to our support boards in both Avon and Livingston County is critical to the future "look" of Avon. The Town was the lead on protecting open space on three Avon farms and was also part of welcoming new business such as Barilla. Support is also needed for our existing business. Residential growth, subdivisions, drainage

DISCUSSION – PRESENTATION OF APPRECIATION OF SERVICE-continued

issues are all parts of the decisions that the Board considers at our meetings. I wish Don and Kelly the best in the future. Their time spent was certainly not equitable with the pay that they received. They should be proud of being part of a team that accomplished so much in twelve years. I have appreciated their insight, hard work and many contributions.

Councilman Cook stated that it has been a pleasure to serve on the Board for the last twelve years. One thing he learned is that you cannot please everyone. He wished Councilman Elect Steen and Ayers good luck. We all love Avon and he believes it will continue to thrive. Be good.

Deputy Supervisor Cole addressed those in attendance stating that he always considered serving the position as Councilman and Deputy Supervisor as community service, and not as a position of power or stature. It was simply community service, and he has enjoyed his 12 years of serving the people of Avon. His first four years during the water wars was the worst. But he believed that we are stronger together than we are apart. The Boards have not always agreed with each other but that's the way it's supposed to work. Cole stated that the people of Avon are its greatest assets, and that Avon is a great community. It's been a pleasure serving in this manner.

Supervisor LeFeber asked for any public comments and there were none.

DISCUSSION - OPEN ITEMS

There were none.

On motion of Deputy Supervisor Cole, seconded by Councilman Cook, the meeting adjourned at 8:00 P.M.

Respectfully submitted by, _____
Sharon M. Knight, CMC/RMC, Town Clerk