

PERINTON TOWN BOARD MEETING
1350 Turk Hill Road, Fairport, NY 14450
Wednesday, August 22, 2012

PRESENT:	James E. Smith	Supervisor
	Patricia S. Knapp	Councilperson
	Joseph H. LaFay	Councilperson
	Peg S. Havens	Councilperson
	Stephen C. Van Vreede	Councilperson

ALSO PRESENT: Robert Place, Esq., Town Attorney; Thomas C. Beck, Commissioner of Public Works; Jennifer A. West, Town Clerk; Michael Doser, Director of Code Enforcement and Development; Jeffrey Myers, Commissioner of Recreation and Parks; Jim Brasley, Planning Board; Chris Fredette, Conservation Board; T.C. Lewis, Planning Board.

Supervisor Smith called the meeting to order at 8:00 pm and introduced the Board and staff present.

Councilperson Havens made a motion, seconded by Councilperson Van Vreede, that the minutes of the Town Board meeting of August 8, 2012 be approved as submitted by the Town Clerk.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

PRESENTATION
RED RIBBON CAMPAIGN

Debra Tandoi, co-chair of the Fairport/Perinton Chemical Prevention Advisory Council (CPAC), appeared before the Board. Ms. Tandoi reviewed the past year’s work of CPAC. CPAC was established twenty-four years ago with a mission to work with the Fairport-Perinton community to maximize resources to educate and empower youth and adults in the pursuit of the reduction of alcohol, tobacco and other drug usage by youth. Ms. Tandoi asked the Town Board to continue supporting Red Ribbon Week, which will be held October 21 through October 27, 2012.

Ms. Tandoi introduced Erik Morrow, winner of the 2012 Red Ribbon logo contest. This year’s Red Ribbon campaign theme is “The best me is drug free!” Supervisor Smith presented Erik with a plaque to thank him for his efforts.

A motion was made by Councilperson Havens, seconded by Councilperson LaFay, that \$1,500 be appropriated to pay for the cost of ribbons for the annual Red Ribbon Campaign.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

PUBLIC HEARING
AMENDMENT TO SECTIONS 122, 205 & 208
OF THE CODE OF THE TOWN OF PERINTON
HYDROFRACKING

Supervisor Smith opened the Public Hearing and asked the Clerk for proof of publication and affidavit of posting. Proof of publication for the Public Hearing was given in the Fairport East Rochester Post on August 9, 2012; affidavit of posting was also August 9, 2012.

Supervisor Smith stated there are proposed changes to Sections 122, 205 and 208 of the Code of the Town of Perinton (regarding hydrofracking) to be presented by Town Attorney Place. Attorney Place stated there are three basic changes to the Code and the first specifically deals with proposed natural gas and petroleum extraction (hydrofracking). The change to the overall zoning ordinance would state that activities are only permitted if specifically set forth in the ordinance. Attorney Place also stated that the section of Code which deals with excavation was somewhat general and may have opened the door for hydrofracking and therefore deletions were made that may have left any loopholes in the Code. The proposed code change also specifically precludes any output from hydrofracking from being disposed of in the High Acres landfill. Attorney Place stated that he has received comments from the Conservation Board and would include their input with any changes resulting from this evening's Public Hearing and any comments received from Monroe County Planning.

The proposed changes to Sections 122, 205 and 208 of the Code of the Town of Perinton follow:

Add text

Delete text

Chapter 122, EXCAVATIONS

GENERAL REFERENCES

Environmental Conservation Board -- See Ch. 16.

Conservation easements -- See Ch. 103.

Enforcement procedures -- See Ch. 115.

Subdivision of land -- See Ch. 182.

Zoning -- See Ch. 208.

§ 122-1. Title.

This chapter shall hereafter be known and cited as the "Excavation Law of the Town of Perinton."

§ 122-2. Purpose and objectives.

It is the purpose of this chapter to provide for the proper use of the land and to require an orderly continuing restoration of all land permitted to be excavated for its resources. The objectives shall be:

A. To protect the land proposed for excavation from being destroyed for future use through improper excavation.

B. To protect the surrounding land uses, natural environment and people from damage or danger from excavation and appurtenant activities.

C. To provide for a plan to restore the excavated land for its ultimate reuse at the expiration of the permit.

D. To allow only those excavation uses which are in accordance with the Town Comprehensive Plan and development objectives.

§ 122-3. Legislative authority; delegation of authority.

In accordance with Article 16 of the Town Law of the State of New York, the Town Board of the Town of Perinton has the responsibility and authority to review and approve, modify and approve, or disapprove plans for excavation within the Town.

Pursuant to the above authority, the Town Board has prepared and adopted this chapter setting forth standards to be followed in the preparation, review and approval or denial of excavation permit applications. By the same authority, the Town Board hereby delegates to the Board of Appeals the authority to conduct all public hearings and grant all permits provided in this chapter. The Department of Public Works shall assemble all information necessary to review applications and shall submit this information to the various boards, councils and individuals set forth in § 122-7C herein.

§ 122-4. Applicability.

This chapter shall apply to the entire area of the Town of Perinton, excluding those areas within the corporate limits of the Villages of East Rochester and Fairport.

§ 122-5. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

APPURTENANT ACTIVITIES -- All on-site operations involved in the treatment, processing or further fabrication of soil, sand, **or** gravel or *natural deposits*, including washing, *sedimentation ponds*, grading, **and** sorting, *grinding*, *concrete batching plants*, *asphalt mixing plants and aggregate dryers*.

BOARD OF APPEALS -- The **Zoning** Board of Appeals of the Town of Perinton.

BUFFER -- Trees, hills, fences, berms or other natural or artificial features which are located so as to conceal or separate the excavation site and related activities from other land uses and to reduce the negative effects on these land uses of noise, glare, dust, visual ugliness and other factors associated with the excavation site and related activities.

DISTURBED AREA -- Any area from which topsoil or overburden has been removed in preparation for removal of natural deposits or which has been filled but not restored to an environmentally acceptable natural state.

EXCAVATION -- The removal of sand, gravel, soil (including topsoil) or *other natural deposits* by stripping, digging or other means for the principal purpose of marketing these deposits.

FENCING -- A vertical barrier of sufficient height, depth and construction to deter the passage of humans or animals from one area to another.

OVERBURDEN -- Soil and all other natural material other than vegetation overlying the material to be excavated.

RESTORATION -- The reparation to an environmentally acceptable natural state of an area which has undergone physical change due to excavation and related activities.

TOPSOIL -- The layer of surface material which is composed of particles not larger than two inches in diameter, of which not less than 90% will pass a No. 4 sieve and not less than 25% nor more than 75% will pass a No. 200 sieve, which contains not less than 3% nor more than 20% organic material, which has an acidity range of 5.5 pH to 7.6 pH and which is capable of nurturing ornamental plants.

§ 122-6. General requirements.

A. All excavations and appurtenant activities commenced henceforth shall be in conformity with the provisions of this chapter.

B. All temporary or permanent permits presently in effect at the date of adoption of this chapter shall be continued until their expiration date, but all operations under such permits shall immediately become subject to the standards and conditions of this chapter. The Board of Appeals has full power and authority to vary those standards and conditions during the period of said temporary or permanent permits if strict enforcement thereof would result in unnecessary hardship to such operators resulting solely from the enactment of this chapter. **The Zoning Board of Appeals shall apply the criteria for a Special Permit set forth in Section 208-54 when it considers an application for an excavation permit.**

C. No excavation or appurtenant activities shall be commenced until a permit therefor shall have been issued by the Board of Appeals.

§ 122-7. Permit application, review and renewal.

A. Applications and all supporting documents, photographs and maps shall be filed in quintuplicate with the Department of Public Works.

B. Upon filing an application for an excavation permit, the applicant shall pay to the Town a fee as set from time to time by the Town Board, which shall be deemed a reasonable sum to cover the costs of administration, no part of which shall be returnable to the applicant. EN

C. At least 30 days prior to a public hearing held by the Board of Appeals, copies of the permit application shall be submitted by the applicant to the Town Planning Board, the Town Engineer, the Monroe County Department of Planning, the Town Conservation Board, the Monroe County Soil and Water Conservation District, the Monroe County Environmental Management Council and the State of New York Department of Environmental Conservation for review and recommendations.

D. The time for the hearing, publication of the notice and mailing of notices and procedure at the public hearing shall be governed by the provisions of § 267-a, Subdivision 5, of the Town Law of the State of New York, as the same may be amended from time to time, or any sections subsequently adopted pertaining to such matters.

E. Upon the conclusion of the public hearing, a transcript of the testimony given, together with copies of all maps and exhibits and/or the minutes of said hearing, shall be forwarded to the Planning Board and the Conservation Board; and within 30 days after receipt of such information, each Board shall report its recommendations thereon to the

Board of Appeals, accompanied by a full statement of the reasons for such recommendations. If one or both Boards fail to report within such period of 30 days or such longer period as may be agreed upon by it and the Board of Appeals, the Board of Appeals may act without such report.

F. Approval or denial of the application by the Board of Appeals shall be rendered within 60 days after the conclusion of a public hearing on said application, unless both the Board of Appeals and the applicant mutually consent to a time extension. The applicant will be notified of the decision, in writing, mailed to the address shown on the application.

G. Excavation permits shall be issued for a period of no greater than five years and shall be subject to semiannual site inspection and review by the Department of Public Works and any other agent designated by the Board of Appeals. A report of the semiannual inspection shall be filed with the Board of Appeals and sent to the owner and applicant. Inspection may also be made by an official Town agent at any reasonable time as deemed necessary. Refusal to permit a duly authorized person or agent to enter upon the premises for purposes of making any inspection, authorized or required under the provisions of this chapter, shall constitute a violation of the terms of the permit issued to said owner. The cost of semiannual inspections and other inspections reasonably required by the Town shall be charged directly to the applicant.

H. If, upon any inspection and review, under the procedures of Chapter 115, Enforcement Procedures, of the Town of Perinton, it is determined that the excavation and appurtenant activities have not been conducted in full compliance with the terms of the excavation permit, the permit may be terminated by the Board of Appeals and the performance bond provided for in this chapter shall be forfeited to the Town.

I. Renewal of an excavation permit upon its termination shall follow the same procedures as those required in this chapter for the original permit, except that if an application for renewal was properly filed prior to the expiration of an existing permit the term of the existing permit shall be deemed to be extended to the time that the Board of Appeals files its decision in regard to the application for renewal.

§ 122-8. Variances.

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter, the Board of Appeals shall have the power in passing on appeals to vary or modify the application of this chapter pursuant to the provisions of § 267-b of the Town Law of the State of New York so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done.

§ 122-9 8. Performance bond.

After the approval of the application and before the issuance of any permit, the applicant and each owner of record of the premises other than the applicant shall jointly and severally execute and file with the Town Clerk a performance bond secured by a letter of credit or surety bond to the Town in the amount of at least \$3,500 per acre of disturbed area. The above party or parties guarantee that upon termination of either the permit or the operation, whichever may come first, the land shall be restored in conformity with both the permit requirements and the standards set forth in this chapter. In the event of default of compliance, such letter of credit or surety bond shall be forfeited to the Town. The Town shall return to the applicant any amount that is not needed to cover the costs of restoration, administration and any other expenses reasonably and necessarily incurred by the Town as a result of the applicant's default. Such bond shall continue in full force and effect until a certificate of compliance shall have been issued by the Town Engineer.

§ 122-10 9. Application requirements.

A. All five copies of the application for each permit shall be signed by the applicant and by each owner of the premises other than the applicant and shall include the following information:

- (1) The name and address of the applicant.
- (2) The name and address of each owner of the premises.
- (3) A certification by the County Finance Officer showing payment of all taxes to date for the premises.

B. Each copy of the application shall include prints from vertical aerial photographs taken at a scale on the original negative no smaller than one inch equals 1,000 feet, which are certified as flown not earlier than one year prior to the date of application. The area covered by the aerial photographs shall include all land within a distance of at least one

mile from the limits of the tract proposed for permit. Prints from the aerial negatives shall be made at a scale of one inch equals 100 feet.

C. Each copy of the application shall include location maps in the form of overlays to the aerial prints, giving the boundaries of the area proposed for permit and any area which has previously been excavated, and identifying all existing public and private land uses within a distance of at least 1,000 feet of these areas.

D. Each copy of the application shall include a natural features map prepared by a licensed engineer or surveyor at a scale no smaller than one inch equals 100 feet. The map shall show the following, both within the tract proposed for permit and within 500 feet of the tract:

- (1) Existing topography at contour intervals of five feet.
- (2) Areas of trees and forests with a description of varieties and sizes.
- (3) Average thickness of overburden.
- (4) Surface drainage pattern.
- (5) Location of all underground utilities and facilities.

E. Each copy of the application shall include an operations map presented as an overlay to the natural features map. The following features, including the area devoted to each, shall be shown:

- (1) Existing and proposed excavation areas.
- (2) Existing and proposed appurtenant activities, identified by type.
- (3) Existing and proposed access roads, identified by width and type of surface material.
- (4) Existing and proposed parking facilities, identified by type of surface material.
- (5) Existing and proposed fencing and buffers, identified by height and type of material.
- (6) Area where topsoil will be temporarily stored for use in restoration.

F. Each copy of the application shall include a restoration plan presented as an overlay to the natural features map and consisting of whatever supplementary descriptive materials are deemed appropriate. The restoration plan shall include the following:

- (1) Boundaries of the area proposed for restoration.
- (2) Final topography of the area proposed for restoration at contour intervals of five feet.
- (3) Final surface drainage pattern and the location and characteristics of artificial drainage facilities in the area proposed for restoration and in contiguous areas.
- (4) Depth and composition of topsoil proposed to be used in restoration.
- (5) The type and density of trees, shrubs, grasses and other vegetation proposed to be used in restoration.

§ 122-11 **10.** General standards.

In approving or denying an excavation permit, the standards and considerations taken into account shall include but not be limited to the following:

- A. Whether the excavations and proposed restoration plan are in accord with the intent of the Town Comprehensive Plan.
- B. Whether they will result in the creation of pits or holes which may be hazardous or dangerous.
- C. Whether they will cause soil erosion or the depletion of vegetation.
- D. Whether they will render the land unproductive or unsuitable for agricultural or development purposes.
- E. Whether they will impair the aesthetic or natural environment of the excavation area or surrounding area.
- F. Whether they will affect the character of surrounding land use.
- G. Whether they will create excessive traffic or impair the quality of the existing and proposed thoroughfare facilities, community facilities and drainage.
- H. Whether they will affect the control of nuisances.
- I. Whether the areas excavated can be effectively restored and revegetated.

§ 122-12 **11.** Standards for site design and operation.

- A. The disturbed area shall not exceed a total of 10 acres at any one time.
- B. Setback.
 - (1) No excavation shall be conducted closer than 100 feet from a public right-of-way or adjoining property line.
 - (2) This setback area shall not be used for any use in conjunction with excavation or appurtenant activities except one sign for identifying the use of the property, fencing, buffers, access roads and stockpiled topsoil.

(3) All structures and appurtenant activities shall not be located closer than 200 feet from a public right-of-way or adjoining property line, except that sedimentation ponds may be located within this setback area if the applicant demonstrates that the topography necessitates such a location and also demonstrates that, where appropriate, sufficient safeguards such as a buffer will be provided for the protection of neighboring environment and residents.

C. Access roads and parking.

(1) All access roads shall be designed to take advantage of buffers and to include curves or other features to screen, as much as feasible, excavation and appurtenant activities from public view. The junction of access roads and public roads shall be at an angle of not more than a deviation of 10° from a right angle (90°).

(2) All major access roads shall be sufficiently free of dust and mud to prevent such material from being spread or blown from the premises. All precautions, such as oiling or watering daily, or more frequently when necessary, shall be taken to prevent dust and sand from being blown from the premises. The first 200 feet of access from a public road shall be paved with an asphaltic concrete pavement.

(3) Sufficient off-street parking shall be provided inside the setback area for company, employee and visiting vehicles. The parking of any such vehicle on a public right-of-way or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of failure to provide for adequate parking.

D. Preservation of natural features.

(1) Topsoil. All topsoil shall be stripped from the active excavation area and shall be stockpiled for use in accordance with the restoration plan, but no closer than 10 feet to any property line. Such stockpiles shall be seeded, covered or otherwise treated to minimize the effects of erosion by wind or water upon public roads, streams or other water bodies or adjacent property. This provision applies to all excavations except those for topsoil removal, in which case the provision applies for only that topsoil which has been stripped for use in the restoration plan.

(2) Landscape. Existing hills, trees and ground cover fronting along public roads or adjacent property shall be preserved, maintained or supplemented by selective cutting, transplanting and addition of new trees, shrubs and other ground cover for the purpose of providing a buffer. If the existing topography and vegetation do not lend themselves to such treatment, the operation shall take into consideration the potential of grading back overburden around the perimeter of the excavation site to create a berm for the purpose of providing a buffer, provided that the berm is properly landscaped with trees, shrubs and other ground cover. No berm shall be constructed within 40 feet of a public right-of-way or adjoining property line.

(3) Drainage. An adequate drainage system shall be provided to convey stormwater runoff originating on or crossing the premises such that the runoff follows, as much as feasible, the natural pattern of runoff prior to excavation and such that it does not adversely affect neighboring property owners. Excavated or disturbed areas adjacent to natural bodies of water shall be undertaken in a manner approved by the Department of Environmental Conservation of the State of New York. Soil erosion, sedimentation and groundwater seepage shall be controlled so as to prevent any negative effects on bodies of water, public roads and neighboring properties.

E. Other safeguards.

(1) Fencing. Fencing shall be required on all sides of disturbed areas that are within 500 feet of residences, unless the depth of excavation is less than five feet. Fencing shall be erected no closer than 40 feet to a public right-of-way or adjoining property line. The fencing shall be at least five feet in height. The Board of Appeals may require a fence, berm or other buffer along part or all of the boundary for safety, visual or other screening purposes.

(2) Lateral support. Lateral support shall be sufficient to prevent the hazard of damage to persons, adjacent properties and public roads by reason of slides, sinking or collapse.

(3) Hours of operation. Excavation and appurtenant activities shall be conducted only between 7:00 a.m. and 5:00 p.m. on Monday through Friday and between 7:00 a.m. and 1:00 p.m. on Saturday, and shall not be allowed on Sundays. Material-hauling loaded trucks shall enter or leave the premises only within the hours permitted for the operation of excavation and appurtenant activities.

(4) Noise. Noise from excavations, appurtenant activities and related operations shall not be such as to interfere with the quiet enjoyment of neighboring properties.

(5) Spillage. Trucks shall be loaded to prevent spillage or windblown matter during transport on public roads.

§ 122-13 **12.** Standards for restoration.

A. No slope shall be left with a grade steeper than one foot of vertical rise to three feet of horizontal distance, and the normal angle of repose should not be exceeded in any case.

B. All stumps, boulders and other debris resulting from the excavations, appurtenant activities or related operations shall be disposed of by approved methods. If disposed of on the site, such debris shall be covered with a minimum of two feet of soil.

C. Topsoil shall be spread over the excavated area to a minimum depth of six inches.

D. The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow acceptable conservation practices.

E. Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavations and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners.

F. Restoration shall be a continuous operation, subject to review and approval at each inspection and at the termination of the permit period. Topsoil grading and planting of the area designated for restoration during the permit period shall have been completed before a permit renewal is granted.

G. Within six months after termination of the excavation operation, all equipment, buildings, structures and other unsightly evidence of the operation shall have been removed from the premises or disposed of by approved methods and all restoration shall have been completed.

§ 122-14 **13.** Amendment of provisions.

The Board may from time to time on its own motion, on petition or on recommendation of the Board of Appeals, Planning Board or the Conservation Board, and in accordance with the laws of the State of New York, amend, supplement or repeal the regulations or provisions of this chapter.

§ 122-15 **14.** Penalties for offenses.

Any person found guilty of a violation of the provisions of this chapter shall be punishable pursuant to Chapter 115, Enforcement Procedures.

§ 205 Natural Gas & Petroleum Exploration, Extraction and Storage.

§ 205-1 Purpose.

The Town of Perinton believes that the protection of residents, neighborhoods, and the natural environment is an appropriate use of its police powers. Allowing one or more of the Explicitly Prohibited Uses described in §205-2 to be conducted in the Town of Perinton would likely be hazardous to the public health, safety and welfare of the inhabitants of the Town, causing air pollution, dust, odors, and excessive truck traffic to and from the sites of such uses. Furthermore, the high costs associates with the disposal of Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes (as defined in §205-5) have in other localities resulted, and could in our Town, result in such material being deposited along roadways, in vacant lots, or business sites or in other unauthorized places. The purpose of this law is to avoid the adverse impacts from these prohibited uses and to protect the health, safety and welfare of the Town residents.

§ 205-2 Explicitly Prohibited Uses. The following uses and activities (being respectively defined in Clause D. below of this § 205) are hereby expressly and explicitly prohibited in each and every zoning district within the Town, and no building or structure shall be created, altered or erected, and no body of water, land or building thereon shall be used, for any of such uses or activities:

(a) Land Application Facility;

(b) Natural Gas And/Or Petroleum Exploration Activities;

(c) Natural Gas And/Or Petroleum Extraction Activities;

(d) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Disposal/Storage Facility;

(e) Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes Dump;

(f) Natural Gas Compression Facility;

(g) Natural Gas Processing Facility;

(h) Non-regulated Pipelines;

(i) Underground Injection; and

(j) Underground Natural Gas Storage.

Any condition caused or permitted to exist in violation of §205-2 is a threat to public health, safety and welfare, and is hereby declared and deemed to be a nuisance.

§ 205-3 Prohibition against Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes. The Town of Perinton hereby exercises its authority and right under NY ECL § 27-0711 to adopt a local law that is consistent with the Environmental Conservation Law Article 27, such consistency demonstrated by the fact that this Local Law complies “with at least the minimum applicable requirements” set forth in such statute, and the rules and regulations promulgated pursuant to said Article 27.

It shall be unlawful for any person to produce, store, inject, discard, discharge, dispose, release, or maintain, or to suffer, cause or permit to be produced, stored, injected, discarded, discharged, disposed, released, or maintained, anywhere within the Town, any Natural Gas And/Or Petroleum Extraction, Exploration Or Production Wastes, except for methane gas which is produced at a permitted landfill within the Town of Perinton.

§205-4 No Application to Customary Local Distribution Lines, Etc. The prohibitions set forth above in this §205 are not intended, and shall not be construed, to (x) prevent or prohibit the right to use roadways in commerce or otherwise for travel; (y) prevent or prohibit the transmission of natural gas through utility pipes, lines, or similar appurtenances for the limited purpose of supplying natural gas to residents of or buildings located in the Town; or (z) 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.

§205-5 Defined terms applicable to this §205. For purposes of this Law, the following terms shall have the meanings respectively set forth below:

AGRICULTURAL USE. The use of the land for agricultural purposes, including, but not limited to, dairying, pasturage, truck farms or nurseries, greenhouses, horticulture, viticulture and apiaries, animal and poultry husbandry and the necessary accessory uses for storage; provided, however, that the operation of any such accessory use shall be incidental to that of the principal agricultural activities.

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 boxes, 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 or a dug hole through which fluids (which may or may not include semi-solids) are injected into the subsurface.

LAND APPLICATION FACILITY. A site where any Natural Gas and/or Petroleum Extraction, Exploration or 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 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, excluding any gas produced by a permitted landfill.

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, excluding any gas produced by a permitted landfill.

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, production 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, 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.

NATURAL GAS COMPRESSION FACILITY. Those facilities or combination of facilities that move natural gas or oil 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.

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 term 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.

TRANSMISSION LINE. A pipeline that transports petroleum, natural 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 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.

Add text

Delete text

§ 208-3. Zoning plan established; intent.

A. There is hereby established a comprehensive zoning plan for the Town of Perinton, Monroe County, New York, which plan is set forth in the text and maps that constitute this chapter. This Zoning Chapter is adopted in accordance with the procedures set forth in § 10 of the Municipal Home Rule Law of the State of New York and Chapter 30, Adoption of Local Laws, of the Town of Perinton under the authority of the provisions of Article 16 of the Town Law (Chapter 61 of the Consolidated Laws of the State of New York). **No building or structure; no use of any building, structure or land; and no lot now or hereafter existing shall hereafter be established, altered, moved, divided or maintained in any manner except as authorized by the provisions of this chapter.**

B. For the purpose of promoting the health, safety or the general welfare of the people of the Town of Perinton, this Zoning Chapter is adopted to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such Zoning Chapter, Zoning Map, subdivision regulations and other local laws are designed to lessen congestion in the streets; to secure safety from fire and other dangers; to provide adequate light and air; to prevent the overcrowding of land and to avoid undue concentration of population; to facilitate the efficient and adequate provision of public facilities and services; and to provide the maximum protection to residential areas from the encroachment of adverse environmental influences, and were made after reasonable consideration, among other things, as to the character of the Town and its peculiar suitability for particular uses and with a view to

conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

§ 208-4. Other laws, ordinances, codes and regulations.

A. In addition to the provisions of this chapter, other local laws, ordinances, codes and regulations dealing with specific subjects have been adopted by the Town Board pursuant to the authority of Article 16 of the Town Law of the State of New York, including the following local laws, ordinances, codes and regulations:

- (1) Conservation Easement Law (Chapter 103).
- (2) Electrical Code (Chapter 108).
- (3) Enforcement Procedures Law (Chapter 115).
- (4) Excavation Law (Chapter 122).
- (5) Fee Law (Chapter 130).
- (6) New York State Uniform Fire Prevention and Building Code (Chapter 88).
- (7) Sewer Use Ordinance (Chapter 171, Part 2).
- (8) Sign Law (Chapter 174).
- (9) Subdivision Regulations (Chapter 182).
- (10) Unsafe Buildings and Collapsed Structures Ordinance (Chapter 95).

(11) Wind Energy Conversion (Chapter 204)

(12) Natural Gas and Petroleum Exploration, Extraction and Storage (Chapter 205)

B. Such local laws, ordinances, codes and regulations, as the same may be amended, revised, deleted or added from time to time, are incorporated in this chapter by reference, as if they were each specifically set forth herein. If there is conflict between two or more of such local laws, ordinances, codes or regulations as to the same subject matter, the more restrictive one shall apply.

Supervisor Smith reiterated the purpose of a Public Hearing and stated that the Town Board has the proposed Code changes before it and is interested in public comment at this point. Normally, the comments are received and the matter would be referred to the Planning and Conservation Boards. Any change to the Town Zoning Code must be referred to the Town Planning Board per New York State mandate. The proposed code changes would then come back to the Town Board for a decision.

Judith McNulty, 647 Thayer Road, asked whether there is any protection to keep trucks involved in hydrofracking off of the major roads in Town. Attorney Place stated that the Town cannot regulate the traffic on those roads.

Chris Fredette, 3 Cabernet Circle, asked whether High Acres Landfill would be able to receive the waste from other Town's hydrofracking operations and Attorney Place stated that the proposed code changes preclude that from happening.

Dick Hastings, 28 Kings Lacey Way, asked who wrote the proposed code changes and Attorney Place stated that he wrote portions, borrowed drafts from other Towns, and had the Town Engineer and Conservation Board review it as well.

Phil Wilkinson, 28 Windrush Valley Road, spoke on behalf of CAPP (Citizen's Alliance for a Pristine Perinton). He thanked the Town Board, Conservation Board, Attorney Place, Mr. Beck and the Highway Department for listening to their organization, the time and effort to review the information provided by CAPP and for proposing these changes to the Town Code to ban slick water hydrofracking.

Joe Hoff, 6 Woodcliff Terrace, stated that he believes that the Governor will release the permits to drill in several Southern Tier counties around Labor Day 2012. Mr. Hoff questioned whether the Town had the ability to proceed with an "acceptance in principle" to preclude any mandates by the Governor.

Larry Coon, 88 Waterford Way, asked what happens in the process after this is referred out to the other Boards and how long that would take. Supervisor Smith stated that the Boards would need to review this at one of their meetings, and then refer their comments back to Town Board and then the Town Board could choose to adopt or not adopt the code changes. Attorney Place stated that any new law is effective ten days after it is sent to NYS for filing.

Richard Hastings, 28 Kings Lacey Way, asked whether the Town is listening to people around the country who have been hydrofracking for 50 years? He stated that he remembers when Waste Management brought High Acres landfill to Perinton and he feels that a project like that would not happen today, yet they have been “an incredible partner”. Mr. Hastings stated that he believes we need energy and this type of thinking hurts us and encouraged the Town to talk to people on “the other side” or in Williamsport regarding hydrofracking.

Craig DeLancey, 210 South Main Street, stated that he is supportive of the proposed code changes.

Supervisor Smith then reviewed some history (outside the fact that the Town had been approached by the CAPP organization to take action). He stated that hydrofracking would most likely never come to Perinton as there are not market forces to bring it to the Town, but if it did somehow occur, it is not consistent with the direction of the Town over the last 50-60 years. The Community is well planned with open space preservation being an important tenet of the Town. Supervisor Smith stated that whether you support hydrofracking or not, he does not believe it is consistent with that tenet or appropriate in Perinton.

Ed Kwiek, 7 Wheaton Circle, asked whether the Town had any documentation or bibliography regarding “why we believe hydrofracking is a bad thing for Perinton”. Attorney Place stated that there is much written information and that it was considered in drafting the Code changes.

There being no additional questions, and all those wishing to be heard having been heard, the Public Hearing was closed.

Councilperson LaFay made a motion, seconded by Councilperson Van Vreede, to refer the three Code changes to the Town Conservation and Planning Boards for their comments.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

APPROVE CHANGES TO THE MEMBERSHIP OF THE EGYPT FIRE ASSOCIATION

A motion was made by Councilperson LaFay, seconded by Councilperson Havens, that the following changes in the membership of the Egypt Fire Association be approved:

New Members	Mark Landwehrle 23 Cedarview Fairport, NY 14450
	Kelly Hayley 9 Bordeaux Fairport, NY 14450

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

APPROVE CHANGE WORK ORDERS
INDIAN VALLEY SEWER PROJECT PHASE 2

Commissioner Beck recommended the following change work orders for the Indian Valley Sewer Project Phase 2. He stated that the Change Order contains 4 uninspected items that were encountered once the project commenced.

Item No. 1 required that temporary repairs be made to the existing storm sewer system on Duncott Road, due to unstable soil conditions that were encountered during the construction of the new sanitary sewer. The cost for this additional work totaled \$5,742.86.

Item No. 2 involved an undercut, and sub-grade stabilization of the road box on Duncott Road near Salem Court. Again, in this instance, due to unstable soil conditions, it was necessary to provide a deep road box and add additional stone, as well as geo-textile fabric to provide a suitable base for the new asphalt road. The total cost associated with this item is \$6,148.95.

Item No. 3 results in the deletion of the construction of a headwall encompassing a storm sewer outlet at #29 Duncott Road. In consultation with the property owner, it was learned that their preference was to have a metal end section installed on the pipe rather than a concrete headwall. Both treatments will work in this particular situation, so the metal end section was installed and the headwall deleted. This change results in a net credit to the project of \$4,600.00.

Item No. 4 includes temporary residential storm lateral connections to the new storm sewer. Since an item for temporary connection was not included in this original contract, negotiations with the contractor resulted in a per connection price of \$250.00. This was determined to be a very reasonable fee for the work involved. It was necessary to make 35 such connections during the course of the project, resulting in an additional cost to the project of \$8,750.00.

Commissioner Beck stated that the total cost of all items included in this Change Order, taking into consideration the credit previously mentioned, is \$16,031.81. The construction estimate included in the approved budget for Phase II of the Indian Valley Sewer Project was \$2,730,875.00. The construction contract was awarded to Gordon J. Phillips, Inc., in the amount of \$2,383,615.00, which is \$347,260.00 under budget.

A motion was made by Councilperson Knapp, seconded by Councilperson LaFay, that the above change work orders be approved as recommended by Commissioner Beck. Each is the result of a change in conditions and was not foreseen in the original plans.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

APPROVE CHANGE WORK ORDERS
JEFFERSON AVENUE SEWER PROJECT

Commissioner Beck stated that the Change Orders for Jefferson Avenue were encountered during the construction of the Jefferson Avenue sewer. The Town has a consulting engineering firm that it works with for the construction of sewers, Larsen Engineers. The Jefferson Avenue Sewers were included as part of the Monroe County Jefferson Avenue road reconstruction project and in doing so, the County developed the bid specifications (instead of Larsen Engineers). Most of the following change work orders were as a result of lack of inclusion in the bid specifications. Commissioner Beck recommended the approval of the following change work orders for the Jefferson Avenue Sewer project:

Item 1

\$17,760.00 for additional fill needed to bring trench elevation up to temporary asphalt base level. This item is not included in the Engineer's Original Construction Estimate.

Item 2

\$25,991.00 for additional trench restoration and temporary pavement due to winter shutdown. This item was not included in the Engineer's Original Construction Estimate.

Item 3

\$44,557.50 for additional stone in the sanitary sewer pipe trenches, which was not included in the Engineer's Original Construction Estimate. The only stone included in the estimate was for stone to be used under manhole and drainage inlet structures.

Item 4

\$2,122.90 for additional sewer pipe and fittings installed, in excess of the Engineer's Original Construction Estimate, due to the addition of pipe in a small area of the project.

Item 5

\$13,503.78 to re-install an existing sanitary sewer in the area of Terrace Drive, to obtain more slope on the sewer. It was discovered during the project that this particular piece of sanitary sewer was originally installed below minimum slopes, could be corrected during the project.

Item 6

\$1,591.31 for repair to an existing sanitary lateral.

Item 7

\$2,225.94 for reinstalling pipe due to a conflict between the sanitary sewer and the water main, which was not shown on the original construction plans.

Item 8

\$4,517.88 to reinstall a lateral in an alternate location for House #499 Jefferson Avenue.

Item 9

\$6,000.00 for asphalt and sewer fuel adjustment allowances as included in the original contract.

Commissioner Beck stated that the total cost of this Change Order, including Perinton's share of the contingency amount for the project, was \$122,770.31. The total approved construction budget for this project was \$2,272,700.00. The actual bid for the project construction was \$889,144.73, which is \$1,383,555.27 below the approved budget amount. With the addition of this Change Order, the actual construction cost of the sewer system will still be \$1,260,784.36 below our approved budget. The reason there is such a differential between the estimated construction cost and the actual construction cost is due to the fact that the Town included a significant dollar amount in the Construction Estimate for dewatering. Fortunately, very little groundwater was encountered during the project; therefore, the Town is experiencing a welcomed under-run in construction cost.

A motion was made by Councilperson LaFay, seconded by Councilperson Van Vreede, that the above change work orders be approved as recommended by Commissioner Beck. Each is the result of a change in conditions and was not foreseen in the original plans.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously approved

AUDIT APPROVAL

A motion was made by Councilperson LaFay, seconded by Councilperson Van Vreede that Audit #9 for August 2012 be approved for the Town of Perinton, pursuant to Town Law, and the Town Clerk presented duly verified bills as follows:

AUGUST AUDIT 2

General Fund	43,269.28
Town Outside of Village	26,489.83
Recreation	21,822.72
Highway General Repair	212,808.82
Highway Snow & Miscellaneous	22,547.03
Joint Sewer	9,609.71
Special Recreation	999.00
Perinton Ambulance Dist	226.90
Bushnell's Basin Fire Protect Dist	37.48
RS&E Ped Bridge Project	88,753.19
Jefferson Avenue Sewer Project	1,524.96
Indian Valley Sewer Project	373,423.84
Workers Comp Res-Bush Basin	<u>52,117.48</u>
	\$853,630.24 Total

The above items were numbers 86074-86195.

AUGUST MANUAL 2

General Fund	7,508.81
Town Outside of Village	214.61
Recreation	17,426.97
Joint Sewer	2,075.19
Midlands Lighting Dist	430.73
Deer Run Lighting Dist	768.31
Misty Meadows Lighting Dist	<u>116.41</u>
	\$28,541.03TOTAL

The above items were numbers 85830, 86067-86071.

Ayes: Smith, Knapp, LaFay, Havens, Van Vreede
Nays: None
Unanimously Approved

There being no further business before the Board and no further questions from the audience, the Board adjourned at 9:55 pm.

Respectfully submitted,

Jennifer A. West
Town Clerk