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Highest Court in New York Affirms Local Power to Regulate Hydrofracking

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NEW YORK ZONING LAW AND PRACTICE REPORT

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HIGHEST COURT IN NEW YORK AFFIRMS LOCAL POWER TO REGULATE HYDROFRACKING

*Jessica Bacher and John Nolon**

I. LOCAL POWER OVER HYDROFRACKING PREVAILS IN NEW YORK

A. New York's Highest Court Affirms Local Zoning Authority over Hydrofracking

In one of the most anxiously awaited New York land use decisions in recent memory, the State's highest court held that local governments have the power to regulate hydrofracking under their authority to enact zoning ordinances.¹ Both the Towns of Dryden and Middlefield enacted zoning laws that entirely banned gas drilling and associated activities within their borders. The plaintiffs, a private gas company in one case and a private property owner in the other, claimed that a supersession

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clause in the State Oil, Gas, and Solution Mining Law (OGSML) preempted local authority. After reviewing the plain language of the OGSML, the statutory scheme, and its legislative history, the court concluded that the legislature did not expressly or by implication preempt the power of localities in New York to regulate land use. Preempted, under the OGSML, in the court's view, was the power to regulate the operations of the oil and gas industry, not matters normally associated with land use regulation.

The Court of Appeals in *Dryden* and *Middlefield* rested its decision on both the Municipal Home Rule Law (MHRL) and the Town Law. The MHRL contains a seldom-cited provision granting authority to local governments, including towns, cities, and villages, "to pass laws. . .for the 'protection and enhancement of [their] physical and visual environment.'"² The Town Law is New York's version of the Standard Zoning Enabling Act, which was the model for most state statutes that delegate zoning authority to local governments. The court pointed to the breadth of municipal zoning powers to provide for the development of a balanced, cohesive community and described the regulation of land use "through the adoption of zoning ordinances as one of the core powers of local governments."³

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The case leaves open whether all communities can legally ban shale gas extraction. Quoting *Matter of Gernatt Asphalt v. Town of Sardinia*, the court noted,

A municipality is not obligated 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 powers to prevent damage to the rights of others and to promote the interests of the community as a whole. (emphasis added).⁴

The court mentioned with favor that both Dryden and Middlefield "studied the issue and acted within their home rule powers in determining that gas drilling would permanently alter and adversely affect the deliberately-cultivated, small-town character of their communities."⁵

B. Importance of the Decision

Federal and state regulations, in most states, leave many local impacts of gas drilling unaddressed.⁶ The critical contribution of the *Dryden* and *Middlefield* decision is that it affirms local regulatory power over hydrofracking in New York, allowing localities to adopt standards and practices to supplement state and federal requirements. One method of responding to the case is for local governments to complete detailed studies of the impacts of hydrofracking and, if the circumstances merit, to ban drilling and associated industrial activities. Another is to follow traditional zoning practice and determine where in the community gas drilling, as an intense industrial activity, can occur safely, if at all, and to allow it in certain districts subject to conditions that render it safe.

In the absence of sound models for tackling these impacts through traditional zoning, local governments may not chose this path and, hoping to achieve some economic benefits of hydraulic fracturing, not regulate it at all. Alternatively, they might simply ban it without conducting the analysis needed to defend the prohibition as reasonable under due process standards. This article's twin objectives are to list many of the local impacts that are appropriate for zoning regulation—impacts not necessarily controlled by state regulation—and to demonstrate that local governments in several states are taking effective action to mitigate those impacts through careful land use regulation.

This, both affirms the importance of local regulation, and provides a regulatory option to prohibiting or not regulating hydrofracking.

Also important in the Court of Appeals decision is its affirmation of the land use authority of local governments within the context of what localities are charged to do as instrumentalities of state government. Towns, cities, and villages are not sovereign entities; they are created by and derive their powers from the state. They acquire the power to adopt land use plans and regulations through the state planning and zoning enabling act and home rule statute. This power to regulate land is inextricably bound up with the authority of local governments to impose property taxes and to use those revenues to discharge their duties to provide municipal services, including the physical infrastructure that economic development demands. Pulling the zoning thread out of this fabric could have many unintended consequences. If the state legislature expressly and in certain terms preempts the authority of localities to zone in order to promote a state interest such as gas exploration, however, this clearly trumps the local government's land use power. One of the risks of a rash of local laws banning hydrofracking is that the state legislature might follow Pennsylvania law, which allows local governments to regulate but not prohibit the practice.⁷

II. PREEMPTION DECISIONS OF NEW YORK'S LOWER COURTS⁸

A. New York's Oil and Gas Statute

The legislature in New York, like those in most states where hydrofracking occurs, has adopted comprehensive legislation to regulate oil and gas operations. As opposed to the federal government, whose power is somewhat constrained by its limited jurisdiction over matters of property, state governments have plenary authority to regulate their resources.

New York's oil and gas statute contains language that at first blush seems to preclude the regulation of hydrofracking under local land use authority. The New York Oil, Gas and Solution Mining Law (OGSML)⁹ provides that:

[t]he provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.¹⁰

Many industry attorneys read this language as expressly preempting local land use control of the location and local impacts of gas wells. Some localities, including Dryden and Middlefield, whose lawyers interpreted the language differently, conducted studies and banned gas drilling by amending their local zoning ordinances to do so. The favorable treatment of the Towns' actions in the lower courts is instructive.

B. The Dryden Trial Court Decision

On February 21, 2012, the Supreme Court upheld the Town of Dryden's total ban on hydrofracking within its borders.¹¹ The court's holding was straightforward: "In light of the similarities between the OGSML and the MHRL as it existed at the time of *Matter of Frew Run*, the court is constrained to follow that precedent in this case."¹² The court found that the OGSML did not expressly preempt local zoning and that the Town's zoning amendment did not regulate gas production; rather, it regulated land use and not the operation of gas mining.

The court noted that "[n]one of the provisions of the OGSML address traditional land use concerns, such as traffic, noise or industry suitability for a particular community or neighborhood."¹³ It cited other preemptive statutes with provisions requiring the relevant state agency to consider the traditional concerns of zoning in deciding whether a permit is to be issued. "Under this construction, local governments may exercise their powers to regulate land use to determine where within their borders gas drilling may or may not take place, while DEC regulates all technical operational matters on a consistent statewide basis in locations where operations are permitted by local law."¹⁴

C. The Middlefield Trial Court Decision

Three days later, on February 24, 2012, the Supreme Court in Otsego County issued a decision in the

Middlefield case granting summary judgment in favor of the Town of Middlefield, upholding the Town's zoning law that banned natural gas drilling.¹⁵ After thoroughly reviewing the legislative history of the OGSML, the court found no provision in it to support the plaintiff landowner's position, stating that:

[N]either the plain reading of the statutory language nor the history of [the OGSML] would lead this court to conclude that the phrase 'this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries' was intended by the Legislature to abrogate the constitutional and statutory authority vested in local municipalities to enact legislation affecting land use.¹⁶

In the court's analysis of the legislative history of the Environmental Conservation Law (ECL), it found that the intention of the legislature was not to preempt the statutory authority vested in local municipalities to enact legislation affecting land use.¹⁷ Rather, the legislature's intent was to impose uniform statewide oversight to ensure and promote efficient utilization of a state resource.¹⁸ Of singular importance in the *Middlefield* decision is the court's understanding of the state legislature's intent when it initially adopted the ECL in the early 1960s. At that time, local zoning was 40 years old and was preceded by decades of adopting local nuisance abatement laws prior to the advent of zoning.

D. Appellate Division Upholds Trial Courts¹⁹

It seems that the two trial court decisions thought that it is imprinted in the mind of the legislature to protect local control, except where the legislature expressly states that preemption of local prerogatives is essential to furthering overriding state interests. In the *Dryden* and *Middlefield* lower court decisions, the judiciary in New York continued to follow its trend of harmonizing two legislative regimes, one intended to impose uniform regulations on the operation of gas drilling and the other designed to control local land use impacts, honoring the statutes that delegate extensive land use control to towns as well as the home rule provisions of the State Constitution that promise localities control over their local property, affairs, and government.

The assessment by the two lower courts was affirmed by the Third Department Appellate Division on May 2, 2013, when it upheld both opinions.²⁰ In upholding the *Dryden* decision by the Supreme Court, the Appellate Division made it clear that "zoning ordinances are not the type of regulatory provision that the Legislature intended to be preempted by the OGSML";²¹ that the Legislature's intention was to "ensure uniform statewide standards. . . in an effort to increase efficiency while minimizing waste. . .";²² and that the court found "nothing in the language, statutory scheme or legislative history of the statute indicating an intention to usurp the authority traditionally delegated to municipalities to establish permissible and prohibited uses of land within their jurisdictions."²³ By distinguishing the purposes of land use regulation from "regulating the actual operation, process and details of the oil, gas and solution mining industries, 'the statutes may be harmonized, thus avoiding any abridgment of [a] town's powers to regulate land use through zoning powers expressly delegated in the Statute of Local Governments. . . and the Town Law.'"²⁴

It was not lost on the Appellate Division that the matters regulated by the state under the OGSML are not the matters traditionally regulated by municipal zoning and land use regulations. Provisions of the OGSML "do not address traditional land use considerations, such as proximity to nonindustrial districts, compatibility with neighboring land use, and noise and air pollution. . . ; the zoning law will dictate in which, if any, districts drilling may occur, while the OGSML instructs operators as to the proper spacing of the units within those districts in order to prevent waste."²⁵

III. IMPACTS OF HYDROFRACKING²⁶

Local-scale impacts from unconventional oil and gas drilling span all stages of development and manifest in both positive and negative ways for affected communities. Positive impacts from hydrofracking operations often relate to increased economic opportunity.²⁷ Payments for drilling rights, leases, and royalties may inject significant new revenue in a community. Gas development typically increases local employment, particularly in services, trucking, and

heavy equipment operation. Property values may rise, both because of new resource value and increasing population and economic activity. This economic boom may also be accompanied by increases in tax revenue. In some cases, communities may experience such benefits from oil and gas operators as improved road maintenance and increased local charitable donations. At the state level, the Department of Environmental Conservation (DEC) projects that hydrofracking will create anywhere from 13,491 to 53,969 jobs in the State,²⁸ and the Public Policy Institute forecasts that the State could gain \$2.7 billion in value added and \$1 billion in local, state, and federal taxes.²⁹

In tandem with the benefits, hydrofracking development can also negatively impact the local environment, the social and economic characteristics of a community, and local health and safety. Potential environmental impacts range from water pollution to water depletion; from air pollution and dust to visual blight and noise; and from habitat fragmentation to increased erosion.³⁰ Environmental damage may also adversely affect property values and farmland preservation. The economic boom and population influx accompanying development may overwhelm local services and infrastructure, such as waste disposal, water treatment, schools, courts, and jails. Gas development brings a surge in truck traffic that may cause deterioration of local roads, congestion, pollution, and noise.³¹ Spills and other accidents at well sites may threaten local health, while emergency services required to respond to such accidents may be stretched beyond capacity because of a gas development boom.

IV. LOCAL REGULATORY AND NONREGULATORY ACTIONS

A. Bans and Moratoria

A careful comparison of the adverse impacts of hydrofracking with the impacts regulated by most states makes it clear that localities remain exposed to some of the risks of gas exploration. There is much evidence that concern over these unregulated, adverse impacts of hydrofracking has motivated local legislatures to ban the practice completely or impose moratoria preventing all operations until more studies have

been completed. Currently, there are hundreds of bans and/or moratoria adopted nationally.³² In the State of New York, it is reported that there are 77 bans, 101 moratoria, and 87 movements for prohibitions against hydrofracking.³³ For example, Germantown, New York placed a moratorium on hydrofracking, recognizing that it is currently the subject of environmental review by the State of New York and that DEC and the State are expected to “promulgate rules and regulations” relative to hydrofracking in the near future.³⁴ The 18-month moratorium was placed to afford the Town adequate time to “review and understand the potential impacts of Natural Gas Operations on land uses within the Town of Germantown” and may be extended in furtherance of the purpose of the health, safety, and welfare of Town residents.³⁵

Additionally, Richmond, New York extended its existing moratorium, originally imposed in January 2012, for an additional 12 months in January 2014.³⁶ The Town stated, “[S]uch additional moratorium will permit the Town to complete the development of proper planning methods and to restrict and prevent potential uses which presently do not conform with present zoning and which endangers public debate on such development.”³⁷ Similarly, a one-year moratorium was placed in Olive, New York in 2012, and is “pending consideration by the Town Board giving due consideration to public input.”³⁸ Niles, New York also extended a one-year moratorium on hydrofracking in 2013, for the purposes of “promot[ing] the protection, order, conduct, safety, health, and well-being of the residents of Niles and the lands that lie within the Town’s border.”³⁹ Utica, New York first adopted the “Hydrofracking Moratorium Ordinance” in 2011, to remain in effect for one year.⁴⁰ The moratorium was extended for an additional year in 2012, and in June 2013, the City adjusted the ordinance to outright ban hydrofracking within its borders.⁴¹ The City determined the prohibition was a reasonable exercise of its police power to prevent damage to the rights of others, to protect the City’s water supply, and to promote the interests of the community as a whole.⁴²

Many other New York municipalities have placed outright bans on hydrofracking. The Town of Lumber-

land, New York has explicitly prohibited any building or structure to be created or altered for hydrofracking in all zoning districts in the Town.⁴³ It is unlawful for anyone to conduct “heavy industry” within the Town of New Lisbon, New York.⁴⁴ Likewise, heavy industry is prohibited in the Town of Warwick, New York. The Town Board amended its Zoning Law in 2013, which now states, “natural gas and oil exploration, natural gas and oil extraction, and natural gas and oil support activities constitute heavy industry.”⁴⁵ Warwick also amended its Town Code to “prohibit any activity that under the State’s current proposed regulations on HVHF [hydrofracking] could allow for the application of waste byproducts, known as ‘flowback’ or simply ‘brine’ on roads for wintertime de-icing and summertime dust suppression in the Town.”⁴⁶ Similarly, Syracuse, New York adopted an ordinance, stating, “[T]he City chooses not to permit sites for extraction of fossil fuels within its City limits but rather seeks to preserve areas for other more sustainable alternatives.”⁴⁷ Roseboom, New York placed a ban in 2012, citing to the City’s Comprehensive Plan. The City also stated its concern for “the variety of wildlife” within its borders that includes Jacob’s Ladder, a globally rare plant.⁴⁸

B. Traditional Regulatory Responses

Nationally, there is a perceptible, but largely unnoticed, trend toward the use of local zoning and land use regulation of hydrofracking, treating gas drilling operations as if they were any other heavy industrial land use. Some of these municipal initiatives are surprisingly comprehensive and, in the aggregate, they provide a significant, if embryonic, menu of options for other localities to consider.

Flower Mound, Texas, for example, requires operators to submit a detailed site plan to obtain an Oil and Gas Permit and to pay a stipulated fee.⁴⁹ It requires a setback distance of 1,500 ft. from any residence, public park, public building, school, or hospital, and of 750 ft. from any floodplain, environmentally sensitive area, or public road or highway. Operators are obligated to notify property owners of their pending application, and a public meeting must be held prior to

permit issuance. The local law explains that the permit and procedure are designed to ensure that hydrofracking operations will not occur at the expense of environmental quality, community character, or quality of life. Flower Mound requires drillers to be insured, to pay an annual inspection fee for the hydrofracking operation site, and to secure a restoration bond payable to the Town in the amount of \$100,000 per acre. The purpose of the bond is to restore proper grading and vegetation to the operation site following the expiration of the oil and gas permit.

Another approach for municipalities is to create an oil and gas zone that defines permitted uses, requires permits for drilling, requires the drillers be insured, regulates the location of wells, fencing/screening/landscaping, equipment, storage tanks, noise/nuisance, and impoundments as Oklahoma City, Oklahoma has.⁵⁰ Santa Fe County, New Mexico provides an additional approach. It established an oil and gas overlay district governing oil and gas exploration, drilling, production, transportation, abandonment, and remediation.⁵¹

Within these options, municipalities can include provisions designed to specifically address identified impacts from hydrofracking. To address environmental concerns, municipalities have imposed predrilling requirements on operators to test all existing water supplies within 1,000 ft. of the surface location of the well. In Peters Township, Pennsylvania, the operator must submit a pretesting and predrilling plan that includes soil testing and water quality testing, which must be approved by the Township.⁵² Bursleson, Texas requires that hydrofracking operations with hydrofracking ponds or pit storage perform baseline soil testing.⁵³ In Mount Carmel, Illinois, operators are required to prevent the escape of gas or fumes into the atmosphere from wells, tanks, or pipelines.⁵⁴

The City of Longmont, Colorado adopted an ordinance that requires the payment of impact fees for all permits issued and it imposes setbacks from water sources of various types.⁵⁵ The City of Fort Worth, Texas requires that hydrofracking operations carry and maintain insurance coverage of at least \$10 million.⁵⁶ This coverage ensures that Fort Worth can recover

from operators if environmental damage occurs. The Town of Pelham, Alabama has a license fee schedule that charges oil and gas operations fees calculated as a percentage of their future gross receipts.⁵⁷

To mitigate the noise impact of hydrofracking operations, the City of Chanute, Kansas limits the operation of hydrofracking wells to the hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.⁵⁸ In Arlington, Texas, the City Council restricts the hours of operation of vehicles associated with drilling and production if a proposed vehicle passes a designated school zone, heavily used roadway, protected uses, or travels along local residential streets.⁵⁹ Peters Township, Pennsylvania requires operators to include proposed truck routes with permit applications.⁶⁰ The Township also retains the right to designate reasonable truck routes as needed to avoid interruption with roadways.

C. Nonregulatory Actions

Municipal governments have a number of nonregulatory strategies available to them to control the local impacts of hydrofracking. These include education and planning functions that convene, inform, and influence the residents and businesses in the community, preparing the way for cautious and careful progress. Such strategies can involve working with landowners to ensure that their lease agreements with drilling companies contain measures to prevent or mitigate local impacts. Also, leases could compel lessees to sign a local host community agreement that requires signatories to follow stewardship and drilling procedures in lieu of local regulations. Following proper local educational efforts, a municipality can amend its comprehensive plan (an advisory, nonregulatory document) to add an unconventional gas exploration component that articulates objectives and planning strategies for achieving those objectives. This component should list and describe possible local impacts in detail, which further educates the public about pending changes due to this industrial activity. Landowners have the power to protect themselves by creating reciprocal negative easements, or real covenants, that limit the use of their land to nonindustrial activities.⁶¹

Implementation of these local strategies puts munic-

ipal leaders in a position to create collaborative decision-making forums and to mediate the tension that inevitably occurs when local leaders and stakeholders are excluded from decisions affecting their communities and local impacts are ignored. In addition, municipal governments that have not been preempted from regulating local land use impacts of hydrofracking can move gradually from these nonregulatory approaches to the adoption of land use and police power regulations, as necessary, to respond to impacts not controlled by these nonregulatory initiatives.

V. RECOGNIZING AND SHAPING THE ROLE OF LOCAL GOVERNMENTS IN REGULATING HYDROFRACKING

As this article demonstrates, zoning is an important instrument in the municipal governance toolkit and, as long as this power is used responsibly, it will not be sacrificed for the sake of streamlining the gas drilling permitting process. Zoning out hydrofracking, on the other hand, may frustrate important state interests, particularly if it becomes too widespread. Gas reserves transcend local boundaries and states have a legitimate interest in promoting an adequate supply of energy sources of their choice. These tensions require a concerted effort to negotiate a process and create a framework for decision-making that provides a role for local and state agencies and their stakeholders.

The result of such a process might be an agreement by the State to promulgate model zoning ordinances, such as a gas exploration overlay zone,⁶² and the provision of technical assistance to localities as they consider and adapt such ordinances to their local circumstances. State agencies that are investing time and money in creating their own regulatory regimes can provide such technical assistance cost effectively to localities as part of a cooperative state-local approach to controlling local impacts and promoting regional and state-wide interests.

The New York Department of Environmental Conservation (DEC) in the environmental impact assessment of its proposed regulations has proposed giving communities with an adopted comprehensive plan

component on gas drilling a method of becoming involved in the state permitting process.⁶³ The proposal is to require an applicant for a state permit in a town with a hydrofracking component of its comprehensive plan to negotiate with local officials to conform the drilling to the plan, prior to DEC's final decision on the permit. But how are localities with limited professional staff going to draft an accurate and reasonable comprehensive plan component on hydrofracking with its multiple and complex impacts? Such a plan should discuss and assess all environmental and public health risks to the particular community's character and environment. State agencies that are charged with regulating the oil and gas industries and those that advise localities regarding land use can be tasked with providing information to localities to help them draft well-informed and appropriate planning documents. This information could also guide communities in identifying measures that they can adopt directly to mitigate the adverse impacts of gas drilling, using the expanding tool box being created by local governments in other states.

There are many more cooperative governance techniques that could be agreed upon if it were the intentional policy of the state to include and work with local governments in the regulation of hydrofracking. Such a policy would recognize and respect the critical role of local governments in controlling land uses within their jurisdictions, and offer them the technical assistance they need to determine where hydrofracking can occur, if at all, and how, if they choose, to regulate it. The *Dryden* and *Middlefield* decision of the Court of Appeals quiets the debate about excluding localities from being meaningfully involved, and should move the State to consider actions it can take to see that they play their historical role in a professional and responsible fashion.

ENDNOTES:

¹Cooperstown Holstein Corp. v. Town of Middlefield, 35 Misc. 3d 767, 943 N.Y.S.2d 722 (Sup 2012), judgment aff'd, 106 A.D.3d 1170, 964 N.Y.S.2d 431 (3d Dep't 2013), leave to appeal granted, 21 N.Y.3d 863, 972 N.Y.S.2d 535, 995 N.E.2d 851 (2013) and order aff'd, 23 N.Y.3d 728, 2014 WL 2921399 (2014).

²Wallach, No. 130, WL 2921399, at *7.

³Id. at *8.

⁴Gernatt Asphalt Products, Inc. v. Town of Sardinia, 87 N.Y.2d 668, 684, 642 N.Y.S.2d 164, 664 N.E.2d 1226 (1996); see also Frew Run Gravel Products, Inc. v. Town of Carroll, 71 N.Y.2d 126, 524 N.Y.S.2d 25, 518 N.E.2d 920 (1987) (in which the Court of Appeals first stated its analytical framework for determining whether a natural resource exploitation law's supersession clause preempts local zoning).

⁵Wallach, No. 130, WL 2921399, at *27.

⁶See John R. Nolon & Steven E. Gavin, Hydrofracking: State Preemption, Local Power, and Cooperative Governance, 63 Case W. Res. L. Rev. 995, 996-1013 (2013) (for further discussion of local impacts and federal regulation).

⁷Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont, 600 Pa. 207, 964 A.2d 855, 858 (2009); Range Resources Appalachia, LLC v. Salem Tp., 600 Pa. 231, 964 A.2d 869 (2009).

⁸See generally John R. Nolon & Victoria Polidoro, Hydrofracking: Disturbances Both Geological and Political: Who Decides?, 44 Urb. Law. 507 (2012).

⁹N.Y. Emtl. Conserv. Law § 23-0303(2) (Consol. 2014).

¹⁰Id.

¹¹Anschutz Exploration Corp. v. Town of Dryden, 35 Misc. 3d 450, 940 N.Y.S.2d 458 (Sup 2012), judgment aff'd, 108 A.D.3d 25, 964 N.Y.S.2d 714 (3d Dep't 2013), leave to appeal granted, 21 N.Y.3d 863, 972 N.Y.S.2d 535, 995 N.E.2d 851 (2013).

¹²Anschutz Exploration Corp., 940 N.Y.S.2d at 466.

¹³Id. at 470.

¹⁴Id. at 471.

¹⁵Cooperstown Holstein Corp., 943 N.Y.S.2d at 722.

¹⁶Id. at 728.

¹⁷Id.

¹⁸Id. at 728-29.

¹⁹Nolon & Gavin, supra note 7, at 1020.

²⁰Norse Energy Corp. USA, 108 A.D.3d at 32; Cooperstown Holstein Corp., 943 N.Y.S.2d at 730.

²¹Norse Energy Corp. USA, 108 A.D.3d at 32.

²²Id. at 34.

²³Id.

²⁴Frew Run Gravel Prods., 71 N.Y.2d at 134.

²⁵Norse Energy Corp. USA, 108 A.D.3d at 37.

²⁶See Addressing the Local Impacts of Hydraulic

Fracturing, Yale Center for Env'tl. Law & Policy, <http://envirocenter.yale.edu/uploads/White%20Paper%20Draft%202.25.14.pdf>. See generally Nolon & Polidoro, *supra* note 9, at 50. Additionally, there is a more detailed list of potential and documented impacts available from the Pace Land Use Law Center.

²⁷Daniel Raimi & Richard G. Newell, *Shale Public Finance: Local government revenues and costs associated with oil and gas development*, Duke University Energy Initiative 1 (May 2014).

²⁸DEC bases these estimates on a 60-year production cycle. The agency's projection also includes: 10,532 to 42,126 gas wells, a 30-year productive life cycle for each gas well, and a 30-year build out. See N.Y. State Dep't of Env'tl. Conserv., *Revised Draft Supplemental Generic Env'tl. Impact Statement on the Oil, Gas and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Share and Other Low-Permeability Gas Reservoirs 4-14, 6-209, Table 6.31, 6-210, 6-213, Table 6.32 (2011) [hereinafter Revised dSGEIS]*, available at <http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf>.

²⁹Estimates also include 62,640 jobs, based on an assumption of 500 wells drilled annually. See Pub. Policy Inst. of N.Y. State, *Drilling for Jobs: What the Marcellus Shale Could Mean for New York 16 (2011)*, available at <http://www.ppynys.org/reports/2011/Drilling-for-jobs-what-marcellus-shale-could-mean-for-NY.pdf>.

³⁰See *Revised dSGEIS*, *supra* note 29, at ch. 6 (discussing potential environmental impacts of hydrofracking).

³¹See *Id.* at 6-303, Table 6.62 (N.Y. DEC estimate of 6,800 total truck trips per horizontal well).

³²Local Actions Against Fracking, [foodandwaterwatch.org](http://www.foodandwaterwatch.org), <http://www.foodandwaterwatch.org/water/fracking/fracking-action-center/local-action-documents/>.

³³Movements Against HVHF, [Fractracker.org](http://www.fractracker.org), <http://www.fractracker.org/map/ny-moratoria/>.

³⁴Town of Germantown, N.Y., 2012 Moratorium on Natural Gas and/or Petroleum Exploration Activities, Natural Gas and/or Petroleum Extraction Activities, and/or Natural Gas and/or Petroleum Support Activities in the Town of Germantown (2012).

³⁵*Id.*

³⁶Town of Richmond, N.Y., Local Law No. 2 (Jan. 14, 2014).

³⁷*Id.*

³⁸Town of Olive, N.Y., Local Law No. 1 (2012).

³⁹Town of Niles, N.Y., Local Law No. 1 (2013).

⁴⁰City of Utica, N.Y., Hydrofracking Moratorium Ord. § 2-29-609 (Sept. 21, 2011).

⁴¹City of Utica, N.Y., Ord. § 2-29-609 (June 4, 2013).

⁴²*Id.*

⁴³Town of Lumberland, N.Y., Ord. No. § 250-75 (Apr. 18, 2012).

⁴⁴Town of New Lisbon, N.Y., Local Law No. 2 (2011).

⁴⁵Town of Warwick, N.Y., Local Law No. 3 (Feb. 26, 2013).

⁴⁶*Id.*

⁴⁷City of Syracuse, N.Y., Gen. Ord. No. 38, ch. 27, art. 10 (2011).

⁴⁸Town of Roseboom, N.Y., Protection of Rural Env't Local Law (2012).

⁴⁹Town of Flower Mound, Tex., Code of Ords. § 34-421 (2011).

⁵⁰City of Oklahoma City, Okla., Muni. Code, ch. 37 (1999).

⁵¹City of Santa Fe, N.M., Ord. No. 2008-19 (Dec. 9, 2008).

⁵²Peters Twp, Pa., Code ch. 27, § 27-713 (2013).

⁵³Burleson, Tex., Code of Ords. § 14-361 (2014).

⁵⁴Mount Carmel, ILL., Code of Ords. art. 1, § 16.5-20 (2013).

⁵⁵City of Longmont, Colo., Ord. O-2012-25 (July 17, 2012).

⁵⁶Fort Worth, Tex., Code of Ords. § 15-41 (2014).

⁵⁷Pelham, Ala., Code of Ords. § 5-1-211 (2012).

⁵⁸City of Chanute Kan., Code of Ords. § 16.44.030 (2014).

⁵⁹City of Arlington, Tex., Ord. No. 11-068 (Dec. 6, 2011).

⁶⁰Peters Twp, Pa., Code ch. 27, § 27-713 (2013).

⁶¹Weiden Lake Prop. Owners Ass'n v. Klansky, 936 N.Y.S.2d 62 (N.Y. Sup. Ct. 2011).

⁶²See Robert H. Freilich & Neil M. Popowitz, *Oil and Gas Fracking: State and Federal Regulation Does Not Preempt Needed Local Government Regulation*, 44 Urb. Law. 533 (2012) (for a discussion of the Santa Fe County Sustainable Land Development Plan oil and gas element). This element "can be used as a local government model for similar planning and regulation in cities and counties where oil and gas drilling and hydrological fracturing permits are requested, in coordination with and supplemental to permits issued

under state oil and gas legislation.” Id. at 557-558.

⁶³See Revised dSGEIS, *supra* note 29, at 26-27.