PUBLIC HEARING – 8:00PM – Regarding Strykersville Fire Company

The Strykersville Fire Company, Inc. seeks to amend its certificate of incorporation to change its name to “Strykersville Volunteer Fire Company, Inc.”. They service the calls on Sanders Hill Road for the Town of Holland.

One comment was made from Keith Schuessler and he agrees for the name change.

Public Hearing was closed at 8:04pm.

Regular Town Board Meeting was called to order by Supervisor Michael Kasprzyk at 8:04pm.

Officials Present Were:
COUNCILMAN GEOFFREY HACK
COUNCILWOMAN ROBERTA HERR
COUNCILWOMAN KAREN KLINE
COUNCILMAN WILLIAM KOLACKI

Other Officials Present Were:
TOWN ATTORNEY RONALD BENNETT
ZONING ENFORCEMENT OFFICER MICHAEL SLUCE
PLANNING BOARD CHAIRMAN MARTIN REGAN
TOWN ENGINEER DAVID PRATT
BOOKKEEPER JILL ZIENTEK
DOG CONTROL OFFICER WILLIAM NEWELL
ASSessor TAMMY ADSITT
BOARD OF APPEALS CHAIRMAN WILLIAM O’DELL

RESOLUTION #42

Motion made by Councilman Kolacki and seconded by Councilwoman Kline, resolve the Town of Holland appoint June McArthur as the Meals on Wheels Chairperson. ALL AYES. CARRIED.

RESOLUTION #43

Motion made by Councilwoman Kline and seconded by Councilman Kolacki, resolve the Town of Holland approve the minutes of the April Board Meeting. ALL AYES. CARRIED.

BOARD OF ASSESSMENT REVIEW – Both Diane Curthoys and Richard White have been re-certified.

RESOLUTION #44

Motion made by Councilman Hack and seconded by Councilwoman Herr, resolve the Town of Holland set a public hearing for 8:00pm on June 13th in regards to Garage and Yard Sales. ALL AYES. CARRIED.

INSURANCE BIDS

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<tr>
<th>Company</th>
<th>Amount</th>
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<tr>
<td>Evans</td>
<td>$31,173</td>
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<tr>
<td>Trident</td>
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</tr>
<tr>
<td>NYMIR</td>
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RESOLUTION #45

Motion made by Councilman Kolacki and seconded by Councilman Hack, resolve the Town of Holland accept the low bid of $30,325 from NYMIR for the Town Insurance. ALL AYES. ACCEPTED

ELECTION DISTRICTS – proposing to take South Protection Road from District 1 and combining it with District 3. This change would affect approximately 80 people.
8:15pm – Public Hearing was opened in regards to the proposed Local Law - Gas & Oil Wells. The proposed local law would require a company to test water wells before drilling within a 1500 foot radius of any potential gas or oil well. The idea is to establish a baseline for such properties and the water source, so property owners can identify if any changes occur from the drilling process.

National Fuel has sent a letter to the town opposing the law, arguing the town’s right to enact it. National Fuel does not feel that the town has the jurisdiction or authority to approve this law. National Fuel has asked for the following letter to be added to the Public Hearing.

National Fuel

James R. Peterson
General Counsel

May 8, 2012

(HAND DELIVERED)
Ms. Sandra Smith
Town Clerk
Town of Holland
Holland Town Hall
47 Pearl Street
Holland, NY 14080-9722

RE: Local Law Intro. No. 3-2012
Local Law 1-2012

Dear Ms. Smith:

Please include this letter among the public comments on this proposed Local Law, which is on this week’s Town Board meeting agenda.

Background

National Fuel Gas Supply Corporation (the “Company”) owns and operates an underground natural gas storage field in the Town of Holland, under the authority of a Certificate of Public Convenience and Necessity issued in 1950 under the federal Natural Gas Act. The Natural Gas Act was adopted by Congress and became law in 1938, establishing comprehensive federal jurisdiction over, among other things, the transportation of natural gas in interstate commerce. The Natural Gas Act refers to the Company and other interstate pipeline and storage companies as “Natural Gas Companies.” Today, the grid of interstate natural gas pipelines, storage fields and related facilities stretches across the country, similar in many ways to the Interstate highway system.

The Company is not an oil or natural gas producer, and is not drilling new wells for the extraction of native gas, from the Marcellus formation or elsewhere. In Holland, the Company is a storage operator – more specifically, it is a federally-regulated Natural Gas Company using its Holland storage wells and other facilities to transport natural gas in interstate commerce under the authority of the federal Natural Gas Act.
Holland Storage Field is essentially a large number of wells, pipelines and other facilities utilized to inject gas into and withdraw that gas from the underground rock formation that trapped and held natural gas for millions of years until it was produced, which continued into the 1940s. Natural gas storage plays a vital role in balancing the demand for natural gas during the year. On the coldest days in Western New York, up to 70 percent of the natural gas delivered to heat homes and businesses comes from storage. Holland Storage Field is one of the key nearby storage facilities serving Western New York’s customers.

From time to time it becomes necessary for the Company to drill a new storage well in the Town of Holland, so the Company has an interest in any Local Law that might impact our federally-regulated operations here. We respectfully offer the following comments on the proposed Local Law.

Section-by-Section Comments

Generally, the proposed Local Law is preempted by Section 23-0303 of the New York State Environmental Conservation Law. See Envirosas. Inc. v. Town of Kiantone, 112 Misc.2d 433, 433 (Sup. Ct. Erie Cty, 1982), judgment aff’d, 89 A.D.2d 1056 (4th Dept 1982) (citing Robin v. Inc.Vil.of Hempstead, 30 N.Y.2d 347, 350-51 (1972)). The proposed local Law targets the oil and gas industry directly, and is not a zoning ordinance of general applicability.

Furthermore, in Sections 120-50(1) and (2) of the proposed Local Law the proposed requirement to test water wells within a radius of 1500 feet from the wellhead is without scientific support, and is internally inconsistent.

Section 120-50(2) requires that the testing be done “in accordance with Paragraph 5 of the New York State Department of Health Drinking Water Regulations or equivalent.” This is apparently intended as a reference to Part 5 (“Drinking Water Supplies”) of Chapter 1 (the “State Sanitary Code”) of the regulations of the New York State Department of Health (“NYSDOH”), compiled at Title 10 of the New York Code of Rules and Regulations. That Part 5 includes Subpart 5-1, which describes some water well testing that the Board may have intended to incorporate in this Local Law. That Part 5 also includes Appendix 5-B (“Standards for Water Wells”), which at Section 5-B.1(b)(18) defines "potable water" as "water which meets the water quality requirements established in Subpart 5-1 of the State Sanitary Code."

However, the proposed Local Law’s 1500-foot radius for testing actually conflicts with those NYSDOH regulations on water well testing. Appendix 5-B, and specifically Table 1 ("Required Minimum Separation Distances to Protect Water Wells From Contamination"), sets out the
minimum separation distances from contamination sources necessary to protect water wells (increased by 50% whenever aquifer water enters the water well at less than 50 feet below grade). The longest distance on that Table 1 is 300 feet, which is the separation distance applicable to “chemical storage sites not protected from the elements” and a “landfill waste disposal area, or hazardous or radiological waste disposal area.” We respectfully submit that a new natural gas well drilled in compliance with current regulations and technology would pose considerably less risk to nearby water wells than either of those potential contamination sources.

The Company generally offers to test water wells within a radius of 1000 feet from the natural gas wellhead even though that is not required. But the proposed Local Law’s quintupling of the NYSDOH distance to 1500 feet is arbitrary and capricious.

Also in Section 120-50(2), the requirement to test “quantity” (rate of flow) as well as water quality is without scientific basis. There is no recorded instance of a gas well reducing the quantity of flow in a nearby water well, and the NYDEC water testing requirement incorporated in gas well permits does not include water well testing for rate of flow. The rate of flow of a water well will vary from year to year, season to season, or even more often. Attempting to hold the Company responsible for a changed rate of flow in a water well between two arbitrary dates will be misleading, will lead to unnecessary litigation, and is arbitrary and capricious. Note also that the Appendix 5-B test of flow quantity requires a flow test for a minimum of four continuous hours, which if required by the proposed Local Law will likely decrease the number of property owners who will consent to the testing of their water well(s).

Section 120-50(3) would make the Company responsible for changes in water quality or quantity “attributable to” a gas well drilled under a special use permit, including “actual and punitive damages.” This appears to be an attempt to expand, solely within the Town of Holland, the New York State common law role that a gas well operator is generally liable for damages to water wells (or anything else) that are actually caused by his gas well. With all due respect, no Town Board has the power to change the statewide common law on torts, or to create a new claim for punitive damages where there is none under current common law.

Section 120-50(4) is too vague to be enforceable. Requiring applicants to “provide full documentation insuring no negative impact to the aquifer and its contributing zones” provides no limit on the discretion of the Town personnel who would decide when (if ever) there is “full documentation insuring no negative impact.” To the extent Section 120-50(4) is another attempt to change statewide tort law solely within the Town of Holland, the Board simply does not have the power to do that. In the unlikely event that the Company ever drilled a natural gas well that actually contaminated the Holland Aquifer and its contributing zones, there are significant and
May 8, 2012

Ms. Sandra Smith
Town Clerk
Town of Holland
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effective remedies already available under the statewide common law applicable in Holland and all the other towns in New York.

Section 120-50(6) covers the decommissioning of a gas well, which is comprehensively regulated by the NYDEP. The Board does not have the power to adopt its own rules and procedures in an area where the New York State Legislature has expressly occupied the field by adopting laws that pre-empt this proposed scheme.

Conclusion

Thank you for considering our comments on this proposed Local Law. The Company reserves its right to challenge the proposed Local Law in court. We would much prefer to continue the good relationship we have had with the Town over more than 60 years of operating the Holland Storage Field.

Very truly yours,

NATIONAL FUEL GAS
SUPPLY CORPORATION

By: [Signature]
James R. Peterson, Esq.
Secretary and General Counsel

cc: Mike Kasprzyk, Town Supervisor
Every person in the Town of Holland uses water that comes from water wells. Residents in the hamlet are served by water from a well source, and those surrounding the hamlet rely on individual wells. If there are any adverse effects, the town wants a remedy. Martin Regan, Planning Board Chairman, said the law allows the town to look at each case and determine whether it would affect the aquifer. Supervisor Kasprzyk stated that there is a storage field of approximately 26 wells now in the town of Holland. They pump the gas during the summer and store it for the upcoming winter months. The wells are on Sanders Hill Rd, to Hunters Creek to Vermont Hill Rd.

Comments from the Public –
Sandra Chelnov – do people know how close a gas well is to their water well
Henry Secord – how do they remedy if chemicals get into the water wells.
Mike O’Connor – what about the water table
Tammy Adsit
Patty Buresch – do they need to notify the town – Supervisors answer was right now they don’t have to notify the town.
Bob Ersing – how many wells in that 1500 ft. radius

Public Hearing was closed at 8:34pm.

Regular Meeting opened again at 8:34pm.

BUDGET AMENDMENTS

RESOLUTION #46

Motion made by Councilman Hack and seconded by Councilwoman Kline, resolve the Town of Holland approve the following budget amendment:

GENERAL FUND
FROM: A1990.4 Contingency Acct. $5,650.00
TO: A3989.4 Public Safety $5,650.00
RE: to cover expenses incurred at 255 Vermont St.
ALL AYES. CARRIED.

COMMITTEE REPORTS:
Cemetery – Councilman Hack: Attorney Bennett will look into the perpetual care funds.
Planning Board Liaison – Councilwoman Kline: at the May meeting the board would like 3 consecutive days for garage sales and not 2 and other wording changed.

Town Park & Community Center – Councilman Hack: project in the kitchen is complete. Storage Shed is erected for baseball equipment and storage.

Beautification – Councilwoman Herr: after Tulip Festival the planter boxes will be put out. Fire hydrants are to be repainted.

ZONING ENFORCEMENT OFFICER’S REPORT – Michael Sluce: report given

BUILDING INSPECTORS REPORT – Scott Hess: report given

FACILITIES MANAGER – Pat Joyce: no report

HIGHWAY SUPERINTENDENT’S REPORT – Pat Joyce: report given

RESOLUTION #47

Motion made by Supervisor Kasprzyk and seconded by Councilman Hack, resolve the Town of Holland authorize the highway schooling and expenditures for Pat Joyce to attend the Highway School in Ithaca from June 10-13. ALL AYES. CARRIED.
BID REQUEST

RESOLUTION #48
Motion made by Councilman Hack and seconded by Councilman Kolacki, resolve the town of Holland authorize the Highway Superintendent to bid for a new 16,000lb excavator and also bid for surplus equipment – a used excavator, one loader and one fork lift, Bid opening to be on June 25th at 10:00am ALL AYES. CARRIED.

DOG CONTROL OFFICER'S REPORT – William Newell: report given

NEW BUSINESS:

Erran Fichman- request for special use permit at 430 North Main St. to have a business for furniture manufacturing. Operating hours are expected to be Monday – Friday from approximately 8am to 5pm. The mobile trailer will be removed from the property.
Councilwoman Kline asked if there would be any noise or dust problem. Mr. Fichman answered no.

RESOLUTION #49
Motion made by Councilwoman Kline and seconded by Councilman Hack, resolve the Town of Holland approve the Special Use Permit for Erran Fichman for furniture manufacturing at 430 N. Main St. ALL AYES. CARRIED

STRYKERSVILLE FIRE COMPANY –

RESOLUTION #50
Motion made by Councilwoman Herr and seconded by Councilman Hack, resolve the Town of Holland approve the name change of Strykersville Fire Company, Inc. to Strykersville Volunteer Fire Company, Inc. ALL AYES. CARRIED.

VALERIE POTRATZ – request to amend special use permit to include six additional dogs along with the five already allowed, for a total of eleven dogs. The purpose of the amendment is to be allowed to dog sit in her home for extra income. No additional building is required, would be kept inside the house.
Planning Board recommended approval for four (4) additional dogs to her current special use permit of five (5) dogs, for a total of nine (9) dogs at any one time; with a one year probation providing no complaints to the Dog Control Officer and also the additional four (4) dogs can only be housed for a maximum of two (2) weeks.

RESOLUTION #51
Motion made by Councilwoman Kline and seconded by Councilwoman Herr, resolve the Town of Holland approve the amendment to the Special Use Permit for Valerie Potratz at 12404 Church Road for four (4) additional dogs to her current special use permit of five (5) dogs, for a total of nine (9) dogs at any one time; with a one year probation providing no complaints to the Dog Control Officer and also the additional four (4) dogs can only be housed for a maximum of two (2) weeks. ALL AYES. CARRIED.

HENRY SECORD – request for a Special Use Permit at 55 South Main St. to sell topsoil, landscape rocks, firewood, mulch, log cabins, and lean to sheds.
Planning board does not recommend his request for the following reasons:
Lot only has 58’ frontage
Lot located in general business, this type of business is not permitted and a variance would be needed
Parking, loading and unloading concerns
Safety concerns as inventory is unattended and not contained
Safety concerns as Boys and Girls Club is adjacent to property

The Town Board wants to see a plot plan with dimensions of each item.
MAY 9, 2012

RESOLUTION #52

Motion made by Supervisor Kasprzyk and seconded by Councilman Kolacki, resolve the Town of Holland table the request for a special use permit to Henry Secord till the next board meeting. ALL AYES. CARRIED.

RESOLUTION #53

Motion made by Councilman Hack and seconded by Councilwoman Herr, resolve the Town of Holland pay the following vouchers:

General District Claims as set #181-223 in the amount of $35,838.28
Forth in Abstract A-5

Highway District Claims as set #37-44 in the amount of $4,413.27
Forth in Abstract DA-5

Water District Claims as set #36-43 in the amount of $4,534.48
Forth in Abstract SW-5

Light District Claims as set #5 in the amount of $1,379.54
Forth in Abstract SL-5

Garbage District Claims as set #4 in the amount of $21,581.72
Forth in Abstract SR-5

Trust & Agency Claims as set #12 in the amount of $5,619.85
Forth in Abstract TA-5

Cemetery District Claims as set #4-5 in the amount of $670.92
Forth in Abstract CM-5

ALL AYES. CARRIED.

RESOLUTION #54

Motion made by Supervisor Kasprzyk to adjourn the Regular Board Meeting at 9:00pm in memory of: Maria Slattery
Jerry Panczyszyn
Loren Hartman

ALL AYES. CARRIED.

RESPECTFULLY SUBMITTED:

SANDRA SMITH
TOWN CLERK