

**TOWN OF TUSTEN  
RESOLUTION NO. 91-08**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF TUSTEN ADOPTING A NEW ARTICLE ENTITLED “ADDRESSING ROAD IMPACTS RELATIVE TO NATURAL GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION OF MINERAL, OIL, AND GAS RESOURCES; REQUESTING HOMERULE AUTHORITY FROM THE STATE OF NEW YORK ON IMPLEMENTING ROAD ASSESSMENT FEES, PERFORMANCE BONDS, AND REQUIRING STEEL TANK STORAGE OF FRACING MATERIAL PER WELL SITE TO PROTECT THE HEALTH, SAFETY, AND WELFARE OF THE TOWN.”**

**WHEREAS**, the Town of Tusten is located in Marcellus Shale Field Basin;  
and

**WHEREAS**, the Marcellus Shale is a deep, fine grained sedimentary rock deposited by a shallow sea and that such Shale is a porous rock that contains hydrocarbons but has practically no permeability; and

**WHEREAS**, due to technological advances and energy related issues, the exploration and production of natural gas in the Marcellus Shale Gas Field has become economically feasible in the recent past; and

**WHEREAS**, oil and natural gas operations include the clearing and leveling of a site, the construction of access roads, potential digging of reserve pits and impacts upon the water supply; and

**WHEREAS**, well stimulation, which is the process of creating or enlarging existing pores to allow gas to more readily reach the producing well, and hydraulic fracturing (“fracing”), associated therewith, includes the use of a fracturing fluid, high pressure, and proponents such as sand; and

**WHEREAS**, drilling and fracing usually involves the use of heavy equipment, including large trucks and related equipment, and often excessive amounts of noise, light, and potential damage to public roads and streets; and

**WHEREAS**, oil and natural gas exploration and operations are exempt from the Federal Clean Air Act, Federal Clean Water Act, Safe Drinking Water Act (SDWA) and exempt from local planning and zoning review under the NYS Environmental Conservation Law, Section New York Environmental Conservation Law (ECL) Section 23-0303; and

**WHEREAS**, the Environmental Conservation Law, Section New York Environmental Conservation Law (ECL) Section 23-0303, preempts towns from regulating land use of Gas and Oil Mining in NYS except over local roads or the rights of local governments under the real property tax law.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN BOARD OF THE TOWN OF TUSTEN APPROVES THAT ACTION MUST TAKEN TO ADDRESS IMPACTS OF THE HEALTH, SAFETY, AND WELFARE TO THE TOWN:**

**BE IT FURTHER RESOLVED**, that the Town will engage in a road assessment study of impacts related to heavy truck traffic with the assistance of the Sullivan County Division of Planning and Environmental Management; and

**BE IT FURTHER RESOLVED** that because gas companies are privileged to be exempt from federal clean air and water acts, federal safe drinking act, and further exempt from local review that a road assessment study will focus on truck traffic related to gas operations as specified under Section New York Environmental Conservation Law (ECL) Section 23-0303 ; and

**BE IT FURTHER RESOLVED** that as the Town pursues a road assessment study in preparation for potential gas drilling that the Town, in conjunction with the Supervisors Association, requests our NYS Assembly and Senate representatives to offer legislation, and/or sponsor a local law, to allow the Town more Home Rule discretion in implementing the results of the road assessment study to collect impact fees, performance bonds prior to the DEC issuing a permit to gas drilling companies; and

**BE IT FURTHER RESOLVED** that additional Home Rule authority is necessary to ensure that the tax burden is not increased or passed on to the residents of the Town due to impacts of the gas industry as it relates to impacts on infrastructure; and

**BE IT FURTHER RESOLVED** that additional Home Rule authority is necessary to require that fracing material be stored in steel tanks per well site to insure the health, safety, and welfare of town residents from flooding and natural disasters which are becoming more frequent in Sullivan County; and

**BE IT FURTHER RESOLVED** that the certified copy of this resolution be filed with the New York State Department of State, Office of the Assembly, Office of the NYS Senate, and the Governor's Office to convey that necessary action is needed to update New York Environmental Conservation Law (ECL) Section 23-0303 to allow for more local influence in protecting the health, safety, and welfare of town residents.

Adopted by the Town of Tusten Town Board on July 14<sup>th</sup>, 2008

Kathleen Michell, Town Clerk