

## Specter of gas drilling evokes action

### River towns seek control over fracking

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Two tiny Delaware River towns hope to do what no other New York town has yet done: control their own gas-drilling destiny.

All sorts of experts say it can't be done. They say that towns like Lumberland, pop. 2,000, and Highland, pop. 2,500, can't control gas drilling, since the state regulates it.

But when the citizens of these western Sullivan County towns heard that Pittsburgh had banned drilling, and other New York towns, including Middlefield, were trying to do the same — Buffalo may do so Tuesday — they started asking questions.

"Is it really true, as we've been told for years, that there's nothing we can do?" asks Carol Roig, a grant writer in Barryville. "The DEC said that. Town attorneys said that. The New York State Association of Towns said that."

"It was almost like a hypnotic mantra," agrees former Times Herald-Record reporter Debbie Conway of Barryville, whose home sits on the banks of the river. "There's nothing you can do, don't even try."

The folks in these river towns on top of the gas-rich Marcellus shale — with more deer on their roads than trucks — decided the stakes were too high not to do something.

"This is a large-scale industry about to come into our region," says Peter Comstock, head of Lumberland's Homestead School and chairman of the Lumberland Advisory Committee on Energy and the Environment. "We had to do something."

So Highland and Lumberland looked for answers on how to control their drilling destiny.

They think they may have found them in the two experts coming to their Feb. 19 forum.

### Ban drilling through zoning

The first way to control drilling would be through zoning, says Ithaca lawyer Helen Slottje of the Community Environmental Defense Council.

Since the horizontal drilling method of hydraulic fracturing, or "fracking," could soon be a permitted activity under state law (once the regulations are finalized), a town can't legally ban it, Slottje says. But if a town's master plan for growth says its goal is to maintain its rural character and discourage intrusive industry, it can ban "high-intensity industrial activity" such as drilling throughout the town, or at least in some areas.

"It would be based not on the safety of drilling," Slottje says, "but that there would be way too much truck traffic operating day and night, and diesel pollution and other safety hazards."

Slottje believes that a drilling ban through zoning regulations would hold up in court after almost-certain challenges from the gas industry and landowners. She points to state Court of Appeals decisions that upheld a town's mining ban through the same approach. The court said that while the Town of Carroll can't regulate mining, it can ban it.

When the question was posed to the agency that would regulate drilling — the state Department of Environmental Conservation — a spokesman would not directly talk about whether a town could zone out drilling. DEC spokesman Michael Bopp did, however, acknowledge it was "not aware of a situation or case where a permit was not issued because of local zoning."

## A question of rights

The second way to approach the issue is the method Pittsburgh employed a few months ago — treat a community's gas-drilling destiny as a civil rights issue, says Ben Price, projects director of the Community Environmental Defense Fund of Pennsylvania.

"People have a fundamental right to self-government," Price says. "So when a state says we don't want you to regulate something you deem to be a threat to your well-being, they're violating your civil rights."

The problem with that approach, says Slottje, is that while it may resonate with residents, it's essentially a "political statement" that may not be defensible if a municipality gets sued by the gas industry.

Price sees her point — although he points to other legal precedents, such as the overturning of "separate but equal" laws, to prove his position.

"What we're talking about is more akin to the civil rights movement of the '60s," he says, noting the town's attorney should defend the rights of its people. "The only way you change things is when people challenge the interpretation of the law."

In Buffalo, Tuesday's Common Council vote to ban fracking is "more of a symbolic thing" and isn't based on zoning or civil rights, says Mark Jascula, the council's senior legislative assistant.

For the people of Highland and Lumberland, the possibility of drilling is real. They aren't necessarily taking sides. They just want to control their drilling destiny.

"Our goal is to bring these people here, to bring the whole community here, to get the conversation going, to do something," Roig said. "The whole idea that there's nothing we can do is has been crippling to the community. We want to do something."

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## **DRILLING FORUM**

The towns of Highland and Lumberland will co-host an informational forum to explore home-rule options for gas drilling from 10 a.m. to noon Feb. 19 at Eldred Central School, State Route 55, Eldred. Admission is free.