

**TOWN OF PENDLETON**  
**ZONING BOARD OF APPEALS**  
**May 25, 2017 Meeting**

**Members:**

Wolfgang Buechler, Chairman  
Lee Daigler  
James Schlemmer  
James G. Meholick, Secretary  
Dennis Welka

The ZBA public hearing for Empire Pipeline was called to order by Mr. Wolfgang Buechler at 7:07 PM. All ZBA members, and The Town Prosecutor, Mr. Ned Perlman, were present at the meeting. No changes were made to the ZBA agenda submitted by Wolfgang Buechler.

Empire Pipeline was represented by Mr. Adams S. Walters, Esq., of Phillips Lytle LLP. Additional members of the Empire Pipeline team present were Mike Kasprzak, Josh Wendt, Ken Webster, Pat Kelly and Karen Merkel. Court reporter, Joan M. Metzger-Hubbell, was present at the hearing to document the proceeding.

**PUBLIC HEARING:**

**Empire Pipeline, Inc.**  
**4281 Killian Road**  
**Pendleton, New York**

Applicant requests a determination that it is an “essential service” under Town Code §247-4; or, in the alternative, requests a use variance to place, construct and/or operate a natural gas compressor facility on the site. The property is 20 acres and is Light Industrial zoning.

Mr. Buechler indicated to the members of the public that we were here tonight to listen to the application of Empire Pipeline, Inc., and provided a quick summary of the application. It was noted that Mr. Walters would be provided the opportunity to give verbal input on the previously submitted written application itself, and public comments would be taken after the applicant has provided his input. It was requested that public comments be limited to approximately 5 minutes and any side discussions should be taken out in the hall. It was also noted that the ZBA would accept additional written public comments postmarked up until June 16, 2017.

Mr. Walters began his presentation and indicated that the public hearing had two components, with the first being an appeal of the determination of the building inspector that the facility is not an essential service; and the second being a request for a use variance. Mr. Walters then took a moment to describe the 22,000 HP compressor station on the 20 acre parcel that they had purchased from the Tonawanda Sportsmen’s Club.

Mr. Walters remarked that the facility went through an extensive site plan review process with the Town Planning Board that lasted approximately 14 months and worked to address concerns regarding noise from the facility, air emissions, lighting, aesthetics, landscaping & screening, and limitations on additional development on the site. These concerns were briefly covered & reviewed in his remarks.

The project in context is part of a Northern Access 2016 that includes a new pipeline from Northern Pennsylvania to Elma, New York. The pipeline will end at Elma, and then additional improvements will be made throughout the system including the compressor station in Pendleton, a Wheatfield dehydration facility, and a new inter-connect in the Town of Wales. The process has been going on for a little over three years with FERC, and in February of this year certificate of necessity in public convenience was issued for the project. Mr. Walters indicated that FERC has exclusive jurisdiction over interstate pipeline facilities, but National Fuel has adopted a policy of going through the local zoning process.

Mr. Walters proceeded to spend some time breaking down the case law and explain their view on why they support the proposition that they are a permitted use and entitled to a use variance; and/or why from their perspective the compressor station constitutes essential services as defined under the Town Code because it is necessary for the distribution of natural gas and qualifies as a public utility.

Mr. Buechler asked if Mr. Walters could talk a little about the customer base for Empire Pipeline. Mr. Walters indicated that Empire Pipeline is an interstate gas pipeline, and asked Mr. Ken Webster, an attorney for National Fuel, to respond further. He indicated that the customers for Empire are going to be local distribution companies as well as industrial users along with interconnections to other interstate pipeline companies and Canada.

Mr. Meholick asked if Empire Pipeline drilled for gas and/or if they were buying gas from other utilities. Mr. Webster indicated that Empire is purely a delivery system, and doesn't purchase any natural gas. Mr. Webster also stated that they are a critical point in the distribution of natural gas, and without them, gas can't get to National Fuels customers. Mr. Webster could not speculate as to how much gas reached local customers, but that the compressor stations are necessary to move the gas. FERC considers their facilities to be a part of the regulated interstate pipeline system and integral to the operation of the pipeline.

Mr. Daigler asked why that size of compressor station was required, and Mr. Meholick asked why it had to be in Pendleton. Mike Kasprzak, Assistant Vice President for Design of Compressor Stations, indicated that the size of the station is based on the differential pressure & volume of natural gas that has to be moved. FERC evaluated several possible locations for the compressor station & determined that Pendleton was preferred due to adverse environmental & contaminated conditions at the other sites. Additional questions were asked related to the routing of the pipeline, pipeline inlet & outlet pressures, safety systems at the compressor station, how far would the gas be transported without the compressor station, and what impact it would have to the customer base that it services if the station was not built.

Mr. Walters concluded his presentation and the ZBA proceeded on to the public comment portion of the public hearing at approximately 8:00PM.

The following individuals spoke at the public hearing:

1. Zachary Chapman – Pendleton, NY
2. Larry Chapman – Pendleton, NY
3. Neil Broughton – Pendleton, NY
4. Annmarie Reeb – Pendleton, NY
5. Sara Siracuse – Pendleton, NY
6. Barb Ciepiela – Pendleton, NY
7. Paul Brooks – Pendleton, NY
8. Gary Abraham – Great Valley, NY
9. Paula Hargreaves – Pendleton, NY
10. Holly Dawson – Pendleton, NY
11. Sue Phillips – Pendleton, NY
12. Phyllis Wass – Pendleton, NY
13. Louise Van Wart – Pendleton, NY
14. Kim Lemieux – Pendleton, NY
15. D. Lemieux – Pendleton, NY
16. Diana Strablow – Kenmore, NY

Comments from the above individuals cited the following concerns & issues:

- \* Health Issues from Emissions
- \* Air Pollution, Vibration & Noise from Compressor Stations
- \* Zoning was Established to Protect Pendleton Environment & Uphold State Standards

- \* Compressor Station Doesn't Meet Criteria as a Public Utility. It is a Gas Transportation Company and does not Distribute to End Users
- \* Questioned Whether the Compressor Station was an Essential Service
- \* Discussed Light Industrial Uses and Compared the Compressor Station as Heavy Industrial
- \* Discussed Personal Health Experience Associated with Existing Natural Gas Facility in Pendleton
- \* Discussed Hearing Blowdown Noise from Facility in Cambria
- \* Discussed Violations of Fracking & Pipeline Companies
- \* FERC does not Deny Applications
- \* Discussed Compressor Station Sites in WNY that are Contaminated
- \* Compressor Gas (72%) will be Transported to Canada & not used Locally

The complete public transcripts are available on the Town of Pendleton Government Website.

Annmarie Reeb provided the ZBA members a signed petition by Pendleton residents that supports the Town of Pendleton's Building Inspector's decision to deny a build permit for the proposed gas compressor.

A motion was made by Jim Meholick to adjourn the meeting at 9:37 PM, and seconded by Dennis Welka. All voted in favor.

Submitted for:

James G. Meholick  
Secretary

Attachments: Available in the Town Clerk's Office  
Town of Pendleton Zoning Board of Appeals Sign-In Sheet  
Public Hearing Mailing List for Empire Pipeline, Inc.  
Submittal from Zachary Chapman  
Submittal from Annmarie Reeb  
Submittal from Barbara Ciepiela  
Submittal from Barb Ciepiela & Cyndi Broughton  
Submittal from Larry Chapman  
Submittal from Paula Hargreaves  
Submittal from Holly Dawson  
Submittal from Sue Phillips  
Submittal from Phyllis Wass  
Submittal from D. Limieux