

2010 National People's Oil & Gas Summit

Experiences from Nockamixon Township

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Barriers to Just Saying, “No.”

- Lawyers, Property Rights & Money
- Pennsylvania Law

Lawyers, Property Rights & Money

- Drilling Co. Lawyers Say Communities Have No Choice
- Residents Guard Property Rights Fiercely
- The Lure and Fear of Money
 - There's money to be made from drilling
 - Fighting it will be costly

Pennsylvania Law

- Municipalities Planning Code
- Oil & Gas Act

Municipalities Planning Code

- Requires each municipality to provide for reasonable development of minerals (§603(i))
- Failure to provide reasonable development opportunities exposes community to Curative Amendment Challenge
- Result of Ban: drilling everywhere, regardless of environmental/community concerns.

Oil & Gas Act

Preemption (*58 P.S. §601.602*)

- While municipality can use zoning power to regulate where in community drilling takes place, cannot regulate operations, at least to the extent regulated by state.
- Huntley & Huntley, Inc. v. Borough of Oakmont (Pa. 2009)
- Range Resources Appalachia LLC v. Salem Township (Pa. 2009)

Nockamixon Township

Bucks County, PA

- Approx. 3,500 residents
- Approx. Per Capita Income: \$26,000
- 22 Square Miles (approx 158 people/square mile)
- Property Taxes: Twp 6.5 mills / Total 137.3 mills (1 mill = \$1 on each \$1,000 of assessed valuation)

Nockamixon's Zoning Ordinance Provisions

- Gas Drilling only allowed in Industrial & Quarry Districts
- Requires Conditional Use Approval (hearing before the Board of Supervisors)

Arbor's Initial Dealings with Twp

- Arbor refused to recognize any Township zoning authority
- Arbor tried to negotiate ability to ignore zoning ordinance provisions
- DEP permit approval in November 2007

Elections Have Consequences

- Change in Board of Supervisors effective January '08 as a result of '07 election
- Township advises Arbor that it must respect Township ordinances – No Shortcuts
- Arbor sent rig on its way toward the site
- Arbor advised that all access routes require bridge crossings and that none of the bridges are rated to support the rig – rig turned back

Litigation Mode

- Court of Common Pleas of Bucks County
- PA Commonwealth Court
- Nockamixon Twp Zoning Hearing Board
- PA Environmental Hearing Board
- Delaware River Basin Commission

Bucks County

Court of Common Pleas

- May 2008 - Arbor files suit against the Township arguing that the Township's ordinance provisions are preempted by state Oil & Gas Act
- Sept. 2008 - Bucks County Court of Common Pleas grants Nockamixon Township's motion dismissing the case
 - requires Arbor to first challenge the ordinance before the Township Zoning Hearing Board (ZHB)

Township Zoning Hearing Board

- Oct. 2008 – Arbor files with ZHB
- Feb. 2009 - ZHB grants Arbor's challenge
 - Each ZHB member holds gas leases with Arbor
- Township appeals from the ZHB to the Bucks County Court of Common Pleas
(case remains dormant)

PA Commonwealth Court

- Arbor appeals to Commonwealth Court
- May 2009 - Court affirms lower court
- Court rules that Nockamixon's ordinance is a zoning ordinance not an ordinance regulating operations.
- Ruling signals ultimate view of preemption issue

Arbor Resources LLC v. Nockamixon Township,
973 A.2d 1036 (Pa. Commw. 2009)

PA Environmental Hearing Board

- April 2010 – DEP Grants Permit Renewal
- May 2010 – Nockamixon Township and Delaware Riverkeeper Network (DRN) appeal to Environmental Hearing Board (EHB) from DEP permit renewal
 - Among issues: DEP's refusal to consider Twp ordinances as required by state law

Delaware River Basin Commission

- April 2010 – DRBC Executive Director reverses direction and rules that Arbor need not undergo DRBC review/permitting
- May 2010 - Township and DRN request hearing
- July 2010 - DRBC grants hearing request
- Case consolidated with hearings on other so-called “exploratory wells.”

Late Summer-Early Autumn 2010

- DRBC requires all parties to post security
- Discovery proceeds before EHB
- Township & DRN retain experts for DRBC hearings

End of a Chapter

- Arbor fails to post security for DRBC hearings
- Sept. 2010 - Arbor withdraws as an interested party in DRBC hearings
- Oct. 2010 - Arbor instructs counsel to withdraw from EHB matter

End of a Chapter

- Oct. 2010:
 - EHB orders Arbor to have substitute counsel enter an appearance or suffer sanctions
 - Arbor requests withdrawal of DEP permit
 - DEP cancels permit
- Nov. 2010 - DRBC prohibits Arbor from proceeding