

MT. PLEASANT TWP. BOARD OF SUPERVISORS' SPECIAL MEETING OF MARCH 17, 2012

The special meeting of March 17, 2012, was called to order at 5:01 p.m. by Chairman Grimm with the Pledge of Allegiance to the Flag. Those present were: Larry H. Grimm, Chairman (LG), Arden B. McCartney, Vice-Chairman (AM), R. Bryan Smith, Supervisor (BS), William A. Johnson, Solicitor (WJ), Mary Ann Stevenson, Secretary (MS), and those citizens listed on the attached sheet.

Discussion Item: AM explained that the purpose of this special meeting was to discuss becoming a party to the legal challenge of PA Act 13 of 2012.

WJ started with an overview. He stated that a number of municipalities have joined in a challenge to this law and those include Robinson, South Fayette, Cecil and Peters Townships that he is aware of but that number could increase. He added that this challenge is not an anti-industry challenge but a challenge to the preemption of municipalities right to control land development through zoning and that this matter would go straight to the Commonwealth Court or even possibly the Supreme Court. WJ continued stating that this challenge is seeking a preliminary injunction against the implementation of this Act due to the fact that municipal ordinances have to become compliant by mid August but at the same time it also compels municipalities to act on applications to drill to be filed within 30 days which is in direct conflict with the PA Municipalities Planning Code (MPC) which has a set of criteria such as applications going to the planning commission and plan reviews or public hearings which can not be accomplished within 30 days. WJ continues to state that all drilling, pipelines, impoundments etc. have to be listed as permitted uses or uses by right in all districts in all municipalities and townships cannot effectively carry out their comprehensive plans with this mandate. He added that this law completely usurps townships authority with respect to zoning, comprehensive plans and the MPC, although there are state guidelines such as set backs that have to be adhered to. WJ added that there are three components to this lawsuit and the first is a challenge to the constitutionality of local government's powers to protect the health, safety and welfare of its residents and that this challenge also purports that this is special legislation specifically singled out for the gas industry with no other justifications. Secondly, he added that it also violates the separation of powers concept whereby giving the Public Utility Commission legislative powers in which they are purely an advisory commission and finally, WJ stated that the time constraints placed on municipalities are too ambiguous.

Public Comments:

1. Paul Battista (PB), Johnston Road. PB asked WJ for the pros and cons of this challenge. WJ stated that this challenge is going forward with or without MPT. He added that the upside of this challenge is that this law is in direct conflict with the constitution and the challenge is an attempt to get back municipal rights to effectively protect the residents through zoning and to adhere to its comprehensive plan. The downside is if there is not a preliminary injunction then the Township would need to accelerate its efforts to make the ordinance compliant and if the ordinance isn't compliant then the Township would not be entitled to the impact fees. He added that the Township can withdraw at any time if the board chooses to.
2. Kim Forrest (KF), Baker Road. Setting aside the challenge, KF asked what the cost of making our ordinance compliant is and that there has to be a cost to amend a zoning ordinance. WJ stated that the Township would have to adhere to the procedures outlined in the MPC with respect to advertising and hearings and it is not free. She added that if the legislature created this special legislation for this industry why wouldn't other industry's lobby for the same thing and WJ stated that is very possible that they would. KF stated that the BOS are responsible for aprox. 1,490 households per census figures and urges the board to join this challenge.
3. Dencil Backus (DB), Walnut Road asked what is the affect of an injunction and WJ responded that there are two; one is a preliminary injunction to put everything on hold and the second is a permanent injunction due to being a constitutional violation. He added the permanent injunction could take months to years. DB added that if both injunctions were successful our ordinance would still remain in effect and WJ stated that it would but it would depend on what ruling or stipulations that the court came back with. DB stated that in essence drilling would continue and pipelines would be laid and compressor stations would operate and

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WJ responded that yes the industry would continue to operate under our current ordinance.

4. Tricia Wolfe, no address given asked how many municipalities have joined this lawsuit and LG stated about ½ dozen at this point and WJ concurred.
5. Paul Battista, (PB) asked where does PSATS stand on this issue and LG stated “on top of the fence”. PB questioned the fact that the Township doesn’t want to be told by the state what to do but that the Township adopted the current building codes, the statewide Uniform Construction Code and if we accepted that from the State then why not this legislation. WJ stated that he is not sure that is an appropriate analogy. AM added that he understands what PB is saying but that the Second Class Township Code gives the municipality the right to zone its land and WJ stated that the MPC does as well and even more so.
6. Bob Hanes, Washington Ave. commented that the State tells people how to build a house but the Township still states where to build it.
7. Bill Forrest (BF), Baker Road stated that the Township chose to adopt the State UCC; it was not forced upon us as in Act 13. He stated that per Jesse White, laws are passed all the time that are unconstitutional in whole or in part and that challenges are part of the process. WJ stated that the courts are going to have to take a hard look and give this some serious consideration. BF added that we have a very good ordinance in place that still allows for drilling in the Township and he urges the board to join in with other municipalities in this challenge. PB asked at what cost. WJ stated that the cost at this time would be minimal. PB stated that the Township could not get involved and there would be no cost to us and the challenge would happen anyway and WJ concurred. LG stated that by not joining it weakens the challenge. WJ added that the more municipalities there are does send a message to the courts to take a hard look at this.
8. JoAnne Wagner, Lakeside Drive stated her concern is in the zoning ordinance language that states “comparable uses or uses not otherwise provided for”. She added that this could be opening the Township up to power plants, waste dumps, coal and landfill industries and that is a concern for her. She stated that we have wet gas that every industry wants their part in the wet gas. WJ stated he understands her concerns that a waste water dump is not all that different from a frac pond and would be a comparable use.
9. Paul Battista commented that when the LSA was opened up in Washington County that there were aspects of it that needed changed and as a result of a challenge changes were made and more money came to municipalities out in this challenge, if successful in this State challenge, townships could lose the impact fee money and WJ concurred.
10. Brian Temple, Dire Drive stated that with or without MPT the challenge is going forward and that the MPT Planning Commission recommends making the Township’s ordinance compliant now. WJ stated that the Township will amend its ordinance unless the courts issue a “stay”. AM recommended a two pronged approach which is to enter into the challenge while making our ordinance compliant at the same time. WJ added that this could be done.
11. Tony Pawlosky, Main St. asked to put this challenge to a vote via a referendum and WJ stated that is not provided for. He then asked the board to work with the industry to work out the differences and WJ responded that is no longer an option as this is now a law, period and there is no more working through differences or issues.
12. Brian Temple, Dire Dr. stated that since this is being challenged anyway to stay out of it and not to spend taxpayer dollars. LG stated it will not cost anything. There was some back and forth discussion regarding fees and costs by unidentified people wanting to know how much this would cost. LG stated that this challenge is not going to cost the Township anything. WJ stated that there will be ancillary cost but they should be minimal. WJ added that he doesn’t work for free and there will be expert witness fees but that MPT will not be response for the bulk of that but at this juncture it is too hard to put an exact figure on it.
13. Dick Wallace, no address given, stated the Township should have it in writing that there are no fees and should not accept a verbal agreement.
14. Russ Bershok, Ft. Cherry Rd. stated to the board that they should not challenge this law so that residents can get their money. He added that there is a lot of money for the Township at stake. WJ stated that whether this challenge is successful or not will not hinder property owners from getting their royalty checks and that industry will continue to drill.
15. Dick Wallace stated that if this challenge did stop the law then the industry would pull out. LG stated that Range Resource’s decision to pull out for two years was in order to fulfill other lease commitments. AM added that our ordinance did not stop them from drilling.

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16. Sally Brown Pawlosky, Main St. asked the BOS to tread lightly as Range Resources is not renewing any of their leases in MPT and that we need to keep the money here because there is nothing else in MPT except for the gas and Range Resources will send a message by moving elsewhere.
17. Bill Forrest stated we can not speak for what Range Resources will or will not do.
18. Harold Steiman, Shoreline Lane stated he has lived in other communities like Mt. Lebanon and the board has to make decisions that represent all landowners who come here for quality of life and property values and not just the leaseholders.
19. Tony Pawlosky stated that he grew up in the coal industry and they had very strict regulations and they (the people, the coal industry and the State) somehow worked it all out. He asked how far off are we on the issues and WJ responded that it is the fundamental right to zone and with the coal industry the State did not tell us we couldn't zone the coal industry as this law does and that is a big difference.
20. Laurie Ward, Hoop Lane asked if waivers can go both ways with respect to setbacks as in closer or farther than the law. WJ stated that no. Activity can go closer if the homeowner agrees and signs a waiver but not farther than in the law.
21. Paul Battista responded to Harold Steiman stating that when CVLD was being developed there were trucks and noise and that the community embraced CVLD and we should do the same for this industry as it is good for the community.
22. Dencil Backus stated that if we the Township believes this Act usurps the Townships right to zone, if it was created on behalf of a privileged industry and if it is unconstitutional, then one is obligated to argue against that law and not just sit back. He urged the BOS to support this challenge.
23. Joey Ogburn, Dire Dr. stated that both sides have valid points but that this industry is good for the Township. He added that frac ponds will eventually go away. He stated that he doesn't like how much of the money is going to the State instead of the Township.
24. Tony Pawlosky asked what happens if we lose this challenge and WJ stated that the Township has to comply with this Act and make our ordinance compliant.
25. Lou McMaster, Waterdam Rd. stated this is the largest renaissance to hit this area and the Township should work it out without a challenge.

The minutes are a reflection of the main points of concern. There were people in attendance that spoke out of turn and were talking at the same time as others. LG closed the comment period.

Agenda Item:

1. Motion to join as a party to the Pennsylvania Act 13 challenge.

BS asked the difference between the constitution and Dillon's Rule and WJ explained that Dillon's Rule states that municipalities only have the authority to do what the State grants them but that the constitution overrides Dillon's Rule and that this legislation violates the State Constitution on many levels.

BS asked WJ if he was confident that there is a constitutional rights violation and WJ stated that he can not predict what the courts will say or how they will rule but that the challenge is valid.

BS asked what the cost estimate will be and LG stated there will be no cost to the Township. WJ stated that there will be his fees and any cost to amend the ordinance. WJ added that John Smith is not looking to MPT for his fees but there will be ancillary cost such as expert witness fees but he can not say how much, maybe a couple of thousand dollars. LG reiterated that there will be no fees to the Township and WJ stated there will be ancillary fees. BS added that he understands the motives of the gas industry, that they want uniformity but questions whether it has gone too far.

AM stated he is proud to be a US Citizen and he stated he believes this is an attack on our freedom by taking away our rights and he is in favor of a challenge. LG added that this law has taken away our powers to regulate ourselves and our laws.

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LG motioned to join as a party to the Pennsylvania Act 13 legal challenge and AM seconded the motion. BS opposed the motion. The motion carried.

Adjournment: AM motioned to adjourn the meeting at 6:24 pm and LG seconded the motion. The motion carried unanimously.

Respectfully submitted,

Mary Ann Stevenson
Township Secretary
Mount Pleasant Township
Board of Supervisors