

Gorsline Case Encourages Municipalities to Regulate Drilling via Zoning Ordinance

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On June 1, 2018, the Pennsylvania Supreme Court issued an opinion in *Gorsline v. Bd. of Sup. of Fairfield Twp.*, which stressed the importance of municipalities' zoning ordinances stating explicitly where oil and gas drilling activities may and may not occur. As stated by the Court, zoning and environmental regulation of oil and gas drilling is a "quintessential local issue that must be tailored to local conditions." *Gorsline v. Bd. of Sup. of Fairfield Twp.*, 67 MPA 2016 at 23 (Pa. Jun. 1, 2018) (quoting *Robinson II*, 83 A.3d 901, 979 (Pa. 2013)).

Case Summary

In the case, Inflection Energy, LLC ("Inflection") applied to the Fairfield Township Board of Supervisors for a conditional use to construct unconventional natural gas wells in a district zoned Residential-Agricultural. Under the Township Zoning Ordinance, the Board of Supervisors had the authority to permit a request for a conditional use, if the requested use was "similar to and compatible with the other uses permitted in the zone." At the conditional use hearing, representatives for Inflection testified that the proposed gas well site was akin to a "public service facility," which was permitted in all zoning districts in the Township. Based on this, the Board of Supervisors approved Inflection for a conditional use. The Gorslines and other residents who opposed the development appealed the decision to the trial court. Citing a lack of evidence of how Inflection's drilling operation constituted a "public service facility," the trial court overturned the decision. On appeal, the Commonwealth Court reversed this decision and held that Inflection's proposed use was similar to a "public service facility" use, based upon its earlier holding in the case of *MarkWest Liberty Midstream & Resources, LLC v. Cecil Twp. Zoning Hrg. Bd.*, 102 A.3d 549 (Pa. Cmwlth. 2014).

The Gorslines appealed to the Pennsylvania Supreme Court, which reversed the Commonwealth Court and held that a conditional use approval should not have been granted. The Supreme Court agreed with the trial court, and found that only limited and unconvincing testimony existed that Inflection's use was similar to a "public service facility." Upon careful review of the Township's zoning ordinance, the Court held that Inflection's proposed gas wells were not in any material respect of the "same general character" as any allowed use in the Residential-Agricultural District. Inflection's proposed use was not similar to a "public service facility" because the gas wells were to be operated by a private, for-profit business, and not a public utility or governmental agency.

Importantly, at the conclusion of the opinion, the Supreme Court stated that "this decision should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts, or that it is fundamentally incompatible with residential or agricultural uses. ... The governing body must, however, actually amend its zoning ordinances to permit drilling in designated areas, setting forth whatever limitations and condition as it decides are appropriate for the protection of its citizenry." 67 MPA 2016 at 23.

Practical Advice

The Pennsylvania Supreme Court's jurisprudence from the last several years related to oil and gas drilling generated from the Legislature's passage of Act 13 of 2012, which substantially amended the Pennsylvania Oil and Gas Act. Through a series of decisions, the Pennsylvania Supreme Court invalidated portions of Act 13 which prohibited municipalities from enacting stricter zoning and environmental requirements than those provided in the Oil and Gas Act. *Robinson Township v. Commonwealth*, 83 A.3d 901 (Pa. 2013) ("Robinson II") and 147 A.3d 536 (Pa. 2016) ("Robinson IV").

The *Gorsline* decision is the most recent case signaling a return to the law as it existed pre-Act 13, where governing bodies and zoning hearing boards were tasked with regulating drilling within their borders. It is up to each municipality to weigh its options, consider the economic and environmental interests of its citizens, and proactively enact zoning and other ordinances addressing oil and gas operations.

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