

ORDINANCE NO. 153

TOWNSHIP OF PENN,
BUTLER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE TOWNSHIP OF PENN, COUNTY OF BUTLER, COMMONWEALTH OF PENNSYLVANIA, AMENDING THE TOWNSHIP CODE OF ORDINANCES, CHAPTER 123 ("ZONING") TO ESTABLISH STANDARDS FOR LAND DEVELOPMENT ASSOCIATED WITH OIL AND GAS RESOURCES AND PROVIDING FOR REPEAL OF PRIOR INCONSISTENT ORDINANCES, SEVERABILITY, AND PENALTIES FOR VIOLATION OF SAME.

WHEREAS, the Penn Township Zoning Ordinance encourages the most appropriate use of land throughout the Township and promotes the safety, health, convenience and general welfare of its residents;

WHEREAS, Oil and Gas Development, including gas exploration, drilling and extraction operations involve activities that may impact the Township's environment, infrastructure and related public health, safety, and welfare;

WHEREAS, Oil and Gas resources exist throughout Western Pennsylvania, including Butler County and Penn Township;

WHEREAS, the Board of Supervisors intend to establish standards for Oil and Gas Development so that Oil and Gas are developed in a manner that minimizes the impact on the Township's environment and infrastructure, and that is consistent with the public health, safety and welfare;

WHEREAS, in the judgment of the Board of Supervisors this Ordinance is consistent with the overall Township Comprehensive Plan;

NOW, THEREFORE, be it ORDAINED and ENACTED by the Board of Supervisors of the Township of Penn, Butler County, Pennsylvania, that the Township Code of Ordinances, Chapter 123, Zoning, Section 14.3, as it relates to excavation for Oil and Gas is hereby repealed and in its place this Ordinance is enacted and provides as follows:

ARTICLE I. PURPOSE.

The purpose of this ordinance is to provide for the reasonable use of land for Oil and Gas Development pursuant to the authority found in the Municipalities Planning Code, Act of July 31, 1968 (P.L. 805, No. 247) and the Flood Plain Management Act, Act of October 4, 1978 (P.L. 851, No. 166), consistent with the health and general welfare of the residents and in a manner that minimizes the impact of such development on the Township's environment and infrastructure.

ARTICLE II. DEFINITIONS.

As used in this Ordinance, the following terms shall be interpreted or defined as follows:

Applicant -- Any person, operator, partnership, company or corporation, including their subcontractors and agents who have an interest in Oil and Gas Development in the Township.

Department -- The Department of Environmental Protection of the Commonwealth of Pennsylvania.

Natural Gas Compressor Station -- A facility designed and constructed to compress natural gas that originates from a gas well or collection of such wells operating as a midstream facility for delivery of gas to a transmission pipeline, distribution pipeline, Natural Gas Processing Plant or underground storage field, including one or more natural gas compressors, associated buildings, pipes, valves, tanks and other equipment.

Natural Gas Processing Plant -- A facility designed and constructed to remove materials such as ethane, propane, butane, and other constituents or similar substances from natural gas to allow such natural gas to be of such quality as is required or appropriate for transmission or distribution to commercial markets but not including facilities or equipment that is designed and constructed primarily to remove water, water vapor, oil or naturally occurring liquids from the natural gas.

Oil and Gas -- Crude oil, natural gas, methane gas, coal bed methane gas, propane, butane, natural gas liquids and/or any other constituents or similar substances that are produced by drilling a well of any depth into, through and below the surface of the earth.

Oil and Gas Development -- The well site preparation, construction, drilling, redrilling, hydraulic fracturing, and/or site restoration associated with an oil or gas well of any depth; water and other fluid storage, impoundment and transportation used for such activities; and the installation and use of all associated equipment, including tanks, meters, and other equipment and structures whether permanent or temporary; and the

site preparation, construction, installation, maintenance and repair of oil and gas pipelines and associated equipment and other equipment and activities associated with the exploration for, production and transportation of oil and gas. This definition does not include Natural Gas Compressor Stations and Natural Gas Processing Plants or facilities performing the equivalent functions.

Oil or Gas Well Site -- A site that consists of the area occupied by the facilities, structures, materials and equipment whether temporary or permanent, necessary for or incidental to the preparation, construction, drilling, production or operation of an oil or gas well.

Township -- The Township of Penn, Butler County, Pennsylvania.

ARTICLE III. ZONING.

Oil and Gas Development is a permitted use by right in all zoning districts in the Township except as set forth hereinbelow:

(1) Due to the sensitive environmental nature and topography in the Conservancy zoning district, all Oil and Gas Development in this district shall be conducted below the surface of the ground. No structures, meters, equipment, tanks, impoundments, or facilities of any nature, whether temporary or permanent, shall be permitted on the surface of the ground.

(2) Natural Gas Compressor Stations or any similar facilities performing the equivalent function may be permitted in the RE, RI, C1, C2 and M zoning districts only as a conditional use subject to the standards set forth in Articles IV, V and VI hereafter and the general conditions in the Zoning Ordinance.

(3) Natural Gas Processing Plants or any similar facilities performing the equivalent function may be permitted in the M district only as a conditional use subject to the standards set forth in Articles IV, V and VI hereafter and the general conditions in the Zoning Ordinance.

ARTICLE IV. PERMIT REQUIREMENT AND APPLICATION.

No Oil and Gas Development shall be undertaken in the Township unless a permit for the development has been issued. The permit application shall be submitted together with a fee established by resolution and shall contain the following information:

1. A narrative describing an overview of the project including the number of acres to be involved, the number of wells to be drilled, the location of all structures and a description of equipment to be used, to the extent known.

2. A narrative describing the project as it relates to existing or anticipated Natural Gas Compressor Stations or Natural Gas Processing Plants.

3. The address of the Oil or Gas Well Site, Natural Gas Compressor Station or Natural Gas Processing Plant for the information of Emergency Responders.

4. Contact information of the individual or individuals responsible for the operation and activities at the Oil and Gas Development shall be provided to the Township and all Emergency Responders. Such information shall include a phone number where such individual or individuals can be contacted twenty-four hours per day, three-hundred sixty-five days a year. Annually, or upon any change of relevant circumstances, the Applicant shall update such information and provide it to the Township and all Emergency Responders.

5. A location map of the Oil and Gas Development showing the approximate location of drilling rigs, equipment and structures and all permanent improvements to the site and any post construction surface disturbance in relation to natural and other surroundings. Included in this map shall be an area within the development site for the location and parking of vehicles and equipment used in the development and use of the site. Such location shall be configured to allow the normal flow of traffic on public streets to be undisturbed.

6. A location map of the Natural Gas Compressor Station or Natural Gas Processing Plant including any equipment and structures and all permanent improvements to the site.

7. A narrative and map describing the manner and routes for the transportation and delivery of equipment, machinery, water, chemicals and other materials used in the Oil and Gas Development.

8. Certification satisfactory to the Township that, prior to the commencement of Oil and Gas Development, the Applicant shall have accepted and complied with any applicable bonding and permitting requirements; and shall have entered into a Township roadway maintenance and repair agreement, in a form acceptable to the Township solicitor, regarding the maintenance and repair of affected Township streets.

9. A description of, and commitment to maintain, safeguards that shall be taken by the Applicant to ensure that Township streets utilized by the Applicant shall remain free of dirt, mud and debris resulting from site development activities; and the Applicant's assurance that such streets will be

promptly swept or cleaned of dirt, mud and debris occurring as a result of Applicant's usage.

10. Certification that a copy of the operation's Preparedness, Prevention and Contingency Plan has been provided to the Township and all Emergency Responders. The Applicant shall maintain at the well site and on file with the Township a current list and the Material Safety Data Sheets (MSDS) for all chemicals used in the Applicant's operations.

11. Certification that the Applicant, upon changes occurring to the operation's Preparedness, Prevention and Contingency Plan, will provide to the Township and all Emergency Responders the dated revised copy of the Preparedness, Prevention and Contingency Plan while drilling activities are taking place at the Oil or Gas Well Site.

12. Assurance that, at least 30 days prior to drilling, the Applicant shall provide an appropriate site orientation and training course of the Preparedness, Prevention and Contingency Plan for all Emergency Responders. The cost and expense of the orientation and training shall be the sole responsibility of the Applicant. The Applicant shall not be required to hold more than one site orientation and training course annually under this section.

13. Copies of the documents submitted to the Department regarding environmental impacts of the project, or if no documents have been submitted to the Department, a narrative describing the environmental impacts of the proposed project on the site and surrounding land and measures proposed to protect or mitigate such impacts, as well as copies of all permits issued by appropriate regulatory agencies or authorities relating thereto.

14. Copies of all permits and plans from the appropriate regulatory agencies or authorities issued in accordance with applicable laws and regulations for the proposed use.

C. Within 15 business days after receipt of a permit application and the required fee, the Township will determine whether the application is complete and shall advise the Applicant accordingly.

D. If the application is incomplete the Township shall so notify the Applicant who may resubmit the completed application. The Township shall issue or deny the permit within 30 days following receipt of the completed application.

ARTICLE V. DESIGN AND INSTALLATION REQUIREMENTS.

Oil and Gas Development constitutes a land development under the Municipalities Planning Code, the Township Subdivision and Land Development Ordinance and the Township Zoning Ordinance and all pertinent provisions of the Code and Ordinances shall apply, except as preempted by federal or state law. In addition, the following design and installation requirements must be adhered to:

1. No Oil or Gas Well Site shall have access solely through a local street. Whenever possible, access to the Oil or Gas Well Site should be from a collector street.

2. Permanent structures associated with Oil and Gas Development, both principal and accessory, shall comply with the height regulations for the zoning district in which the Development is located.

Provided, there may be an exemption to the height restrictions contained in this section for the temporary placement of drilling rigs, drying tanks, and other accessory uses necessary for the actual drilling or redrilling of an oil or gas well. The duration of such exemption shall not exceed the actual time period of drilling or redrilling of an oil or gas well and in no case may it exceed 6 months.

3. Drilling rigs shall be located a minimum setback distance of 1.5 times their height from any property line, public or private street, and building not related to the drilling operations on either the same lot or an adjacent lot. Exemption from the standards established in this subsection may be granted by the Township upon a showing by the Applicant that it is not feasible to meet the setback requirements and that adequate safeguards have or will be provided to justify the exemption.

4. The drilling pad for the Oil or Gas Well Site shall comply with all setback and buffer requirements of the zoning district in which the Oil or Gas Well Site is located.

5. Natural Gas Compressor Stations and Natural Gas Processing Plants shall comply with all setback and buffer requirements of the zoning district in which the Natural Gas Compressor Station or Natural Gas Processing Plant is located.

6. 24-hour on-site supervision and security shall be provided by the Applicant during the initial drilling, or redrilling operations.

7. Upon completion of drilling or redrilling security fencing consisting of a permanent chain link fence at least 6 feet in height equipped with lockable gates at every access point and having openings no less than 12 feet wide shall be promptly installed at the Oil or Gas Well Site to secure well heads, storage tanks, separation facilities, water or liquid impoundment areas, and other mechanical and production equipment and structures on the Oil or Gas Well Site. Warning signs shall be placed on

the fencing surrounding the Oil or Gas Well Site providing notice of the potential dangers and the contact information in case of an emergency.

8. Emergency Responders shall be given means to access Oil or Gas Well Sites in case of emergency.

9. In the development of Oil or Gas Well Sites the natural surroundings should be considered and attempts made to preserve existing trees and other native vegetation.

10. Lighting at the Oil and Gas Well Development, either temporary or permanent shall be directed downward and inward toward the activity, to the extent practicable, so as to minimize the glare on public roads and nearby buildings.

11. Lighting at a Natural Gas Compressor Station or a Natural Gas Processing Plant shall, when practicable, be limited to security lighting.

ARTICLE VI. CONDITIONAL USE REQUIREMENTS FOR NATURAL GAS COMPRESSOR STATIONS AND NATURAL GAS PROCESSING PLANTS.

Where Natural Gas Compressor Stations and Natural Gas Processing Plants are conditionally permitted the following specific conditional use requirements apply, in addition to the requirements set forth in Articles IV and V set forth hereinabove.

1. Prior to the operation of a Natural Gas Compressor Station or Natural Gas Processing Plant, the Applicant shall establish by generally accepted testing procedures, the continuous seventy-two hour ambient noise level at the nearest property line of a residence, public building, school, medical, emergency or other public facility. In lieu of the establishment of the ambient noise level established by the continuous seventy-two hour test the Applicant may assume and use, for the purpose of compliance with this ordinance, a default ambient noise level of 55 dBA. The sound level meter used in conducting any evaluation shall meet the American National Standard Institute's standard for sound meters. The Applicant shall provide the Township with documentation of the established ambient noise level prior to operating the compressor station or processing plant.

2. The noise generated during the operations of the Natural Gas Compressor Station or the Natural Gas Processing Plant shall not exceed the average ambient noise level established in subsection (1) by more than 5 decibels.

3. Effective sound mitigation devices shall be installed to permanent facilities to address sound levels that would otherwise exceed the noise level standards when

located near a residence, public building, school, medical, emergency or other public facility.

4. In the case of complaints received by the Township, they shall be addressed by the Applicant within 24 hours following receipt of notification. The Applicant shall continuously monitor for a period of forty-eight hours at the complainant's property line. The Applicant shall report the findings to the Township and shall mitigate the problem to the allowable level if the noise level exceeds the allowable rate.

5. Exemption from the standards established in this section may be granted by the Township for good cause shown and upon written agreement between the Applicant, the Township, and affected property owners.

ARTICLE VII. SEVERABILITY.

If any section, subsection, sentence, clause or phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion hereof.

ARTICLE VIII. PENALTIES.

The Applicant or any person performing work at his direction who violates or permits a violation of this ordinance shall, upon being found liable therefore in a civil enforcement proceeding commenced by the Township before a Magisterial District Judge, pay a fine of not more than \$600.00, plus all court costs, including reasonable attorney's fees, engineering fees, expert fees and court costs incurred by the Township in the enforcement of this ordinance. No judgment shall be imposed until the date of the determination of the violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable Rules of Civil Procedure. Each day a violation exists shall constitute a separate offense. Further, the appropriate officers or agents of the Township are hereby authorized to issue a cease and desist notice and/or to seek equitable relief, including injunction, to enforce compliance herewith. No Bond will be required if injunctive relief is sought by the Township.

ARTICLE IX. EFFECTIVE DATE.

This Ordinance shall take effect five (5) days after passage.

ORDAINED AND ENACTED into law this 12 day of April, 2011.

Attest:

BOARD OF SUPERVISORS OF PENN TOWNSHIP

Linda D. Zorfass
Secretary

By: Samuel M. Mac

Chairman

Dea
Michael J. Manz