

Appendix C

August 15, 2012

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Board of Trustees
Charter Township of West Bloomfield
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West Bloomfield, MI 48325-0130

Derk W. Beckerleg
Direct: 248-539-2808
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Re: Oil and Gas Regulations
Our File No. 6316 B2M

Dear Trustees:

An issue has arisen regarding the regulation of oil and gas drilling operations within the Township due to the State's recent auction of mineral rights. At issue is a provision of the Michigan Zoning Enabling Act which limits the Township's ability to regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes. A related issue is the propriety of mining activity for the extraction of natural resources within the Township. This provision of the Michigan Zoning Enabling Act at issue, MCL §125.3205, states:

§ 125.3205. Zoning ordinance subject to MCL 460.561 to 460.575; regulation or control of oil or gas wells; prohibition; extraction of valuable natural resource; challenge to zoning decision; serious consequences resulting from extraction; factors; limitations.

Sec. 205. (1) A zoning ordinance is subject to the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575.

(2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources.

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

(a) The relationship of extraction and associated activities with existing land uses.

(b) The impact on existing land uses in the vicinity of the property.

(c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.

(d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

(e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.

(f) The overall public interest in the extraction of the specific natural resources on the property.

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

(7) This act does not limit state regulatory authority under other statutes or rules.

As outlined by the above quoted statute, the Township cannot prohibit or permit oil and gas exploration and extraction. The Township does, however, have some ability to regulate the related activities pursuant to a decision of the Supreme Court which applied a similar provision contained in an earlier version of the statute. The Township may explore possible regulation of the ancillary activities associated with drilling, such as hours of operation, odors, use of roads, and under the watercourse and wetland protection provisions in Chapter 12 of the Code.

Additionally, the Township has authority under the Zoning Enabling Act to regulate and actually prohibit the extraction of natural resources by mining in some circumstances. In order to fully exploit the ability to regulate the extraction of natural resources by mining, as outlined under the Zoning Enabling Act, the Township must be able to demonstrate very serious consequences would flow from the mining activity. Time to explore the potential consequences of the mining activity may be needed to ensure the Township adopts enforceable and effective regulations in this area.

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A moratorium may be considered to allow the Township an opportunity to fully investigate, draft and adopt regulations to protect the natural resources of the Township and the health, safety and welfare of its citizens while still maintaining the spirit of the Michigan Zoning Enabling Act's encouragement of resource exploration. Such a moratorium would be limited in nature and designed merely to provide time to consider effective regulations. A proposed moratorium is attached for consideration.

Very truly yours,

Derk W. Beckerleg

cc: Ms. Michele Economou Ureste, Supervisor
Mr. Marshall Labadie, Development Services Director
William P. Hampton, Esq.
Derk W, Beckerleg, Esq.

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TOWNSHIP OF WEST BLOOMFIELD

MORATORIUM RESOLUTION

WHEREAS the Township desires to maintain its long tradition of protecting the natural resources and the environment within its borders

WHEREAS the State has auctioned off mineral rights it possessed within the Township borders leading to a concern regarding adverse impacts resulting from uncontrolled exploration and extraction activities within the Township by those who purchase these mineral rights.

WHEREAS the Michigan Zoning Enabling Act provides for some limitations on the Township's ability to regulate the exploration and extraction of natural resources within the Township.

WHEREAS time to fully explore the potential irreparable harm to the natural resources and environment in the Township is required to consider, draft and adopt effective regulation of natural resource extraction within the Township is required, now therefore:

BE IT RESOLVED that effective September 1, 2012 for a period of one (1) year, through August 31, 2013, a moratorium is hereby established on the consideration, review or action by all Township entities, officials, employees and/or agents on applications, proposals, requests, permits, approvals, zoning compliance or certificates regarding drilling operations in the Township that might be proposed or presented to the Township, and that during the moratorium period, no drilling operation shall be allowed in the Township.

BE IT FURTHER RESOLVED that during the period of the moratorium established by this Resolution, an aggrieved property owner or business petitioner may request and be entitle to a hearing before the Township Board for the purpose of attempting to demonstrate that the moratorium will preclude all viable economic use of their property or otherwise violate applicable provisions of state or federal law. A hearing shall be requested in a written submittal to the Township Clerk that describes the grounds for the request and will be scheduled for the next regular Township Board meeting. Upon concluding a hearing, the Township Board shall determine whether the petitioner has made the required demonstration, and if so, shall grant relief from the moratorium to the extent necessary to cure that effect or violation.

Motion by Trustee _____, seconded by Trustee _____, that the above Resolution be adopted.

AYES:

NAYES:

ABSTENTIONS:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

I, _____, the duly qualified Clerk of the Township of West Bloomfield, Oakland County, Michigan, does hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the Township Board of the Township of West Bloomfield on the ____ day of _____2012, the original of which is in my office.

Township Clerk

Independence Township residents protest natural gas drilling at Bay Court Park

By JOSEPH SZCZESNY
and MONICA DRAKE
Of The Oakland Press

Plans for drilling for natural gas have led to protests in Independence Township.

Opponents of the drilling are orchestrating a petition drive to stop the drilling, which they say also involves a practice known as fracking

— using pressurized fluid in rock — to release natural gas from underground rock formations.

Opponents recently held a protest and rally at Bay Court Park, off of Andersonville Road in the southwest corner of Independence Township, to draw attention to the issue.

Seventy-five percent of Bay Court Park's mineral rights are owned by the state

of Michigan. Currently, the state has leased their mineral rights to Jordan Development Co. LLC, based in Traverse City.

Within the year, Jordan owner and Vice President Ben Brower said they are planning to drill a well within a community west of Independence Township.

Although the state has leased Bay Court Park's mineral rights to the company, Brower said there are no plans as of now to begin drilling within the township. Brower said the company may never drill in Independence Township.

"We're drilling in other places first, and if that's successful, maybe we'll come back to Independence Township," Brower said. "The township owns one-quarter of the mineral

rights, and we've been talking to them about leasing that percentage."

Brower said the company does not have a right to enter onto the park property. Instead, Jordan Development Co. can pool natural gas from the park by drilling from property adjacent to the park.

Longtime township resident Tim Heming said the residents' concerns about the drilling have not been adequately answered by state officials.

Heming is organizing a petition drive to stop the drilling.

"We're trying to educate the public on just how bad this fracking can be," added Heming, who said there has not been enough consideration given to the potential



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hazards.

The concerns range from the dumping of toxic chemicals into the groundwater, contamination of local wells and lakes, and the potential of serious disruption from the industrial level of truck traffic that the drilling will create around the 49-acre park.

Brower of Jordan Development Co. argued that there are no plans for fracking within Independence Township. He said the rock within Bay Court Park is carbonate, a kind of porous rock.

"We don't need to frack this reservoir, even though I don't think there's anything wrong with that," Brower said.

"Fracking has to do with shales. Shales, by their very nature, are tight rock. They're not porous, and the only way to get oil and gas out of them is by fracking. I don't think there's anything wrong with that, but in this case, we won't be drilling from shales."

Independence Township Trustee Neil Wallace said the township is actively looking into preventing drilling from occurring. The township attorney is currently reviewing a title search to determine if the mineral rights do, in fact, belong to the state or to the township.

Wallace said the township used a state grant when purchasing Bay Court. Wallace said, as a condition, the state may have received the mineral rights.

"We as a township are actively determining what we are permitted by law to do to make certain our community is protected," Wallace said. "It's an absolute misunderstanding that the township is seeking to have this done. This is something that has been forced upon us."

The park sits in an environmentally sensitive corner of the township where Van Norman Lake flows into Maceday Lake near the headwaters of the Huron River. The mineral rights of 27 acres of the park were put up for auction in early May with the expectation that any royalties from the drilling could be returned to the township.

The anti-fracking initiative in Independence Township also has joined forces around Michigan. The anti-fracking coalition was organized in November 2011 to educate the public on the need to ban fracking and raise awareness of the dangers of gas drilling to the state's economy, to the environment and to the health and safety of its people, according to the website of the group, "Stop Fracking in Michigan."

Critics note the recent efforts at the state level to regulate fracking are basically controlled by the oil and gas industry, and mineral rights to thousand of acres of state land are being auctioned off right across the state.

Michigan is considered an excellent spot for drilling exploratory and test well because the entire state is thought to sit on a geological formation that is accessible to new drilling techniques.

Fracking, despite the potential dangers to the environment, has a lot of support and momentum behind it because of the potential value of the natural gas deposits at stake and the potential for making the U.S. economy less dependent on more expensive imported energy.

Brower of Jordan Development Co. said, "Globally, our country is in need of domestic energy. You've seen gasoline prices go up because we're bringing oil from out of the country. If we can develop our own oil and gas right here in Michigan, that will eliminate our need to bring it from overseas."