

Court: Zoning key to gas drilling

By: AMANDA CREGAN The Intelligencer

Pennsylvania's Supreme Court has ruled on two cases that will frame how the gas drilling debate is played out in Nockamixon.

Nockamixon's sprint to maintain local control over gas drillers just took another turn.

The state Supreme Court has ruled on two cases in western Pennsylvania that will surely echo across county lines.

In written decisions Thursday, Pennsylvania Supreme Court justices sided with the state's authority to control gas drilling, deeming that local laws cannot be in conflict with state regulations already in place.

But the court also confirmed that local officials do have the right to zone where in the municipality drilling can occur.

Supervisor Chairwoman Nancy Janyszeski was pleased with decisions, saying the zoning rights mentioned were an important distinction.

"It's good. It allows the township to use zoning to determine where they can control drilling," Janyszeski said Sunday, emphasizing that Nockamixon ordinances currently allow companies to drill only on properties zoned industrial or the quarry. "It also gives a good footing to move forward," she said. "It's given us clarification now."

It's unclear how many of the 250 property owners who hold gas leases in Nockamixon are within those boundaries, but the last state Department of Environmental Protection permit issued to drill in the Upper Bucks community did not fall within an industrial zone.

Oakmont in Allegheny County had been fighting engineering company Huntley & Huntley, which is involved in the oil and gas industry in Pennsylvania.

Oakmont was sued by Huntley four years ago because borough officials refused to grant a permit to drill for natural gas in a residential neighborhood.

The same issue is at the heart of Nockamixon supervisors' conflict with Michigan-based gas drilling company Arbor Resources, which is hoping to break ground in search of a natural gas goldmine in Upper Bucks.

Like Nockamixon, Oakmont's local ordinances restricted and zoned where drilling could take place.

Like gas drilling company Arbor Resources, Huntley cited that Pennsylvania's Oil and Gas Act trumps any local ordinances involving drilling and hands the regulatory power over to the state's Department of Environmental Resources.

The court emphasized that "municipalities are creatures of the state and have no inherent powers of their own. Rather they possess only such powers of government as are expressly granted to them and as are necessary to carry the same into effect."

Justice Saylor explained that the state's oil and gas act totally preempts any local drilling regulations, except in dealing with flood plain management.

But the justices noted one important power local officials do hold: zoning.

"We concluded that the act's preemptive scope is not total in the sense that it does not prohibit municipalities from enacting traditional zoning regulations that identify which uses are permitted in different areas of the locality, even if such regulations preclude oil and gas drilling in certain zones," according to the top court ruling.

"I think it's a good thing," Nockamixon attorney Jordan Yeager said Sunday. "It's not a complete and total victory, but it would have been naive to expect that we could do anything we wanted to regulate oil and gas industries."

A second gas drilling decision was handed down Thursday. The Supreme Court piggybacked much of its ruling over to a similar case in Salem in Westmoreland County.

The township had been fighting in court with three gas and oil companies for four years for the right to regulate gas drilling in Salem.

The gas companies used the same argument, that the local gas drilling ordinances violated the municipalities planning code and were preempted by the state's oil and gas act.

The justices found that Salem was trying to police many of the same aspects of oil and gas extraction, and the court again sided with the gas drillers.

Like Nockamixon, municipalities and gas companies across the state have been following the two cases closely and waiting for the highest state court to set a precedent.

Only two weeks ago, the Upper Bucks township lost a case before the zoning hearing board, the first judicial stop. The board agreed with gas drillers that Pennsylvania's Oil and Gas Act overshadows any local legislation.

Nockamixon supervisors have said they will appeal the zoners' ruling.

But now that the new Supreme Court decisions are on the books, it's unclear how they will choose to proceed through the courts.

"I don't think it's all out in the wash yet as to how all this plays out," said Supervisor Janyszeski.

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February 23, 2009