

# PENN TOWNSHIP COMMISSIONERS

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## MEMO

**TO:** General Public

**FROM:** Alexander J. Graziani, AICP Secretary / Manager Penn Township

**DATE:** Wednesday January 21, 2015

**RE:** Answers to Questions related to the Penn Township Pending Zoning Ordinance as adopted October 2014 and amended in January 2015.

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Below are responses to questions prepared with the assistance of Nick Kennedy, Esq. Community Advocate for the Mountain Watershed Association and presented to the Penn Township Board of Commissioners on November 17, 2014. Township Responses are underlined.

### PREAMBLE:

A zoning ordinance is a legislative function of the governing body pursuant to the authority granted to it by the Pennsylvania Municipalities Planning Code ("MPC"). All ordinances adopted pursuant to the MPC are deemed constitutional and can be deemed otherwise only by a court of law. When functioning in its legislative capacity (in its adoption of a zoning ordinance), the governing body is not required to render opinions as to the constitutionality of the provisions of its ordinance or provide justification or rationale therefor. Further, the questions below are submitted in anticipation of litigation and are a form of discovery.

### Compatible Use Questions

1. How is the new zoning ordinance consistent with the *Robinson Township* decision and the Environmental Rights Amendment?

See Preamble. This question seeks justification and/or seeks a legal conclusion.

2. How is a well pad a compatible use with residential uses?

See Preamble. The decision of whether or not a well pad may be compatible with a residential use must ultimately be determined by a court of law.

3. How was it determined what residential areas would be included in Mineral Extraction Overlay and thus subject to the prospect of unconventional drilling?

Question No. 3 cannot be answered for the reason that the determination of zoning classification/Mineral Extraction Overlay district(s) is within the sound discretion of the Board of Commissioners of the Township of Penn.

4. How does allowing drilling in the Mixed Density Residential District fit with the stated purpose of that district?

**Stated Purpose:** “The MDR Mixed Density Residential District is established in order to provide land for a wide variety of housing options in a number of configurations at moderate to high densities, as well as to provide for personal and professional services, small-scale mixed use sites and compatible support uses.”

See Preamble. Any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law).

5. How does allowing drilling in the Neighborhood Commercial District fit with the stated purpose of that district?

**Stated Purpose:** “The NC Neighborhood Commercial District is established in order to provide land for small scale commercial uses, personal and professional services, planned mixed use developments, multi-family residential, mixed-use structures with commercial uses on the first floor and residential on floors above, restaurants, arts and entertainment, and compatible support uses for the permitted principal uses.”

See Preamble. Any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law).

6. How does allowing unconventional drilling in residential and commercial zones meet the stated purpose of the Mineral Extraction Overlay?

**Stated Purpose:** “The purpose of the MEO Mineral Extraction Overlay District is to provide areas for the extraction of minerals as defined by the Commonwealth, where the

population density is low and significant development is not projected for the near future.”

See Preamble. Any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law).

### **Development Infill Overlay District**

7. How was it determined which residential areas would be included in the Development Infill Overlay District?

Question No. 7 cannot be answered for the reason that the determination of zoning classification/Development Infill Overlay district(s) is within the sound discretion of the Board of Commissioners of the Township of Penn.

8. How is the stated purpose of this district being furthered by allowing unconventional drilling as close as 600 feet to residences, schools, churches, etc. despite their location in the Infill Overlay District?

**Stated Purpose:** The purpose of the Development Infill Overlay District is to establish a health and safety buffer from surface related activities and facilities, specifically oil and natural gas extraction, in developing areas of the Township where residential and nonresidential development has occurred and is projected to occur.

See Preamble. This question seeks a legal conclusions; further, any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law).

9. How is the purpose of this district being furthered (assuming there are no setbacks for compressor stations) by allowing compressor stations right up to the border of this overlay district?

See Preamble. Any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law). However, the ordinance requires a twelve-hundred (1,200') foot setback from protected structures and a two hundred (200') foot setback from property lines.

### **Setbacks**

10. How did you arrive at 600 feet as the setback for unconventional drilling? Why is that sufficient?

See Preamble. This question seeks justification and/or rationale for decisions made in a legislative capacity.

11. "Potential Public Health Impacts of Natural Gas Development and Production in the Marcellus Shale in Western Maryland," "concluded that an adequate setback from the corner of a [fracking] facility to the corner of a residential property (2000 feet) can minimize exposure." Was this report considered? If so, why was it not followed?

See Preamble. This question seeks a legal conclusions; further, any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law).

12. Why are the setbacks from drilling and Natural Gas Processing facilities less than those required for Adult Oriented Businesses under 190-503? Note: Adult Oriented Businesses must be 1500 feet from the boundary line of a residentially zoned area, or property line of a single family dwelling, church, school, or library. This is significant because not only do they have large setbacks, they have to be setback from the boundaries of residential zones themselves, which is not a requirement for drilling. Also note: An adult oriented business cannot be placed within 5,000ft of another business (no limit for drilling, compressors, etc.)

See Preamble. This question seeks justification and/or rationale for decisions made in a legislative capacity.

### **Compressor Stations**

13. Is there a setback requirement for compressor stations?

Please see Reference **190-406 IC Industrial Commerce District**, section (F) Dimensional Standards.

14. According to 190-641 Oil and Gas Operations Section A, compressor stations and gas processing plants must be approved by the Board of Commissioners before a permit is issued. If

the Board of Commissioners is going to vote on compressor stations and gas process plants, why are they permitted uses as opposed to conditional?

Why not retain greater control through a conditional use approval process?

See Preamble. Any action taken by the Township while functioning in its legislative capacity is deemed constitutional unless deemed otherwise (by a court of law). Further, a conditional use is a permitted use.

### **Other**

15. How are the stated objectives of Penn Twp, as enumerated in the ordinance, being furthered by the ordinance?

See Preamble. Please refer to 190-101 Purpose.

16. Section D (2) (f) requires spills to be reported “timely” to Penn. What constitutes timely and why is immediate reporting not required?

See Preamble. This question seeks justification and/or rationale for decisions made in a legislative capacity.

17. How will the thousands of truck trips be handled so as to not impair the community or create traffic flow problems?

The Township has no knowledge that thousands of truck trips will be made. However, the Township is concerned about the impacts to Township Roads and has adopted weight limit ordinance (see Ordinance 902-2014).

18. 190-147(F) (5)(d)(4) states: “Hazardous or Toxic Waste — Hazardous or toxic waste shall not be permitted to accumulate on any property, and disposal shall be in compliance with applicable Commonwealth of Pennsylvania hazardous or toxic waste handling regulations. “ Does this mean the ordinance is banning pits? If not, why not? Why not require a “closed loop system”?

See Preamble. Further, please see Reference 190-407(F) (5) (d) (6)

19. Where in the ordinance does it require the operator to show compliance with all state and federal air pollution requirements?

Please see 190-407 (F) (8)

20. Why is the Mineral Extraction Overlay not clearly marked on the proposed map?

A new map is being prepared.

### **Noise & Lighting**

21. Section D (4) sets a noise level of 60 dBA. How this was level arrived at and does this apply to all stages of drilling?

See Preamble. This question seeks justification and/or rationale for decisions made in a legislative capacity.

22. Have studies been done on the average ambient noise in the township?

No detailed studies have been done on the average ambient noise in the Township.

20. Is the company required to monitor noise levels?

These matters are still being reviewed.

23. How will compliance be assured?

These matters are still being reviewed.

24. Section D (6) sets lighting requirements, how were these specific requirements established?

See Preamble. This question seeks justification and/or rationale for decisions made in a legislative capacity.

25. How does that requirement relate to performance standard G relating to glare?

These matters are still being reviewed.