

# After Commonwealth Court Denies Challenge to Municipality's Unconventional Drilling and Operations Ordinance, Citizen Group Petitions Pennsylvania Supreme Court for Review

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On February 23, 2022, the Murrysville Watch Committee (MWC) petitioned the Supreme Court of Pennsylvania to allow an appeal of its unsuccessful challenge of the Municipality of Murrysville's Oil and Gas Ordinance (Ordinance), which authorized oil and gas wells as a conditional use in Murrysville's Oil and Gas Recovery Overlay District (Overlay District), including parts of the rural residential zoning district. As adopted, the Ordinance's geographic and other limitations (e.g., required setbacks from well pads) restricted unconventional oil and gas development to only 5% of Murrysville's land mass. MWC originally filed a validity challenge to the Ordinance in October 2018 before the Murrysville Zoning Hearing Board (Board), claiming, among other things, violations of due process, equal protection, and the Environmental Rights Amendment (ERA) to the Pennsylvania Constitution, Pa. Const. art. I, § 27. Broadly, MWC contended that unconventional oil and gas drilling is an industrial activity incompatible with residential zoning districts. The Board held multiple hearings, denied MWC's challenge, and issued 167 findings of fact related to its decision. Without presenting any additional evidence, MWC appealed the Board's decision to the Westmoreland County Court of Common Pleas, which affirmed the Board's decision, noting that the record showed that MWC provided no evidence to differentiate the Ordinance from other, similar ordinances upheld on appeal, the precedential application of which foreclosed MWC's challenges. MWC subsequently appealed that decision to the Commonwealth Court of Pennsylvania.

On January 24, 2022, the commonwealth court affirmed the trial court's and Board's decisions. *Murrysville Watch Comm. v. Municipality of Murrysville Zoning Hearing Bd.*, No. 579 C.D. 2020 (Pa. Commw. Ct. Jan. 24, 2022). In doing so, the court relied on its prior decisions *Frederick v. Allegheny Township Zoning Hearing Board*, 196 A.3d 677 (Pa. Commw. Ct. 2018), and *Protect PT v. Penn Township Zoning Hearing Board*, 220 A.3d 1174 (Pa. Commw. Ct. 2019). In *Frederick*, the appellees claimed that an Allegheny Township, Westmoreland County, zoning ordinance that allowed oil and gas wells as a use by right in all zoning districts, subject to additional limitations, violated the ERA. The local zoning board and trial court both rejected these challenges and the commonwealth court affirmed, defining the appropriate standard for determining an ERA violation as whether (1) the values in the first clause of the ERA are implicated and (2) the governmental action unreasonably impairs those values. *Murrysville*, slip op. at 23–24; see Vol. XXXV, No. 4 (2018) of this *Newsletter*. Likewise, in *Protect PT*, the commonwealth court affirmed the validity of the Penn Township, Westmoreland County, zoning ordinance, which also faced claims of ERA violations. That ordinance created an overlay district authorizing natural gas operations by special exception, subject to certain limitations. The court rejected the challengers' arguments of actual risk to the environment or health of township residents and found that the ordinance did not violate the ERA or due process. *Murrysville*, slip op. at 27–28.

Applying its analysis of these cases, the commonwealth court also found that the appellants failed to provide any evidence that unconventional oil and gas development, as contemplated under the Ordinance, was incompatible in the authorized residential zoning districts. On the contrary, the court concluded that the municipality had appropriately balanced protecting property owners in the Overlay District with economic development considerations and rejected the appellants' claims that the Ordinance violated citizens' due process rights. *Id.* at 21. For similar reasons, the court found that MWC had not shown that the Ordinance "unreasonably impaired" citizens' rights under the ERA. *Id.* at 28. Finally, the court rejected the appellants' claim that the Overlay District violated citizens' equal protection rights under article III, section 32 of the Pennsylvania Constitution because it treated rural residential districts unequally. *Id.* at 35. The court reasoned that by their nature, overlay districts are subject to available land and population density, which municipalities can account for in their development. *Id.* The court also rejected MWC's remaining claims, as further detailed in the opinion.

On February 23, 2022, MWC filed its petition to the Supreme Court of Pennsylvania to allow it to appeal the commonwealth court's decision. At the time of this report, the respondents had filed their answers to MWC's petition. See *Murrysville Watch Comm. v. Municipality of Murrysville Zoning Hearing Bd.*, No. 56 WAL 2022 (Pa. filed Feb. 23, 2022).

**Editor's Note:** The reporters' law firm represents Olympus Energy LLC, an intervenor in the litigation with a pending unconventional gas well in Murrysville.

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