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June 12, 2017

VIA FEDEX OVERNIGHT MAIL

Robert A. Willig
Senior Deputy Attorney General
Office of Attorney General
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

**RE: ACRE Review Request – Simmons Farm
Peters Township, Washington County**

Dear Mr. Willig:

As Solicitor for Peters Township, Washington County (the "Township"), I am in receipt of your letter dated May 15, 2017, regarding the ACRE Review Request received by the Office of Attorney General from [REDACTED] and [REDACTED] relative to the Township's Oil and Gas Ordinance. Please note that the Township is one of the seven Pennsylvania municipalities that successfully challenged the amended Pennsylvania Oil and Gas Act ("Act 13") in the *Robinson Twp., et al. v. Commonwealth, et al.*, matter, wherein the Pennsylvania Courts (the Commonwealth Court and the Pennsylvania Supreme Court) found that allowing drilling in all zoning districts violated the Pennsylvania and U.S. Constitutions. In your letter, you indicated that the Township may provide any information that may be of assistance to your office during its review of the Township's ordinance. Please accept this letter, along with attachments, as the Township's submission of information to assist in your ACRE review.

As a preliminary matter, I have attached a copy of the Township's recently enacted Oil and Gas Ordinance (the "Ordinance") (**Exhibit A**) for your review. The crux of [REDACTED] complaint is that the current Ordinance, which follows the tenets of the *Robinson Twp.* decisions (as well as the U.S. and Pennsylvania Constitutions), prohibits natural gas drilling on the [REDACTED]. As a result, [REDACTED] asserts that [REDACTED] had "plans to expand" which have only been "possible" through its lease with Range Resources because the farm, "would have used the gas or the money from the gas to heat the greenhouses." Of course, with the advent of horizontal drilling, surface drilling is not necessary for the production of gas and lateral drilling legs now extend up to three (3) miles from a surface drill site, thereby negating the need to authorize surface activities in most instances in order to produce gas.

Notably, the [REDACTED] is zoned in a R-1A (Residential-Single Family Conventional) district within the Township. The uses and purposes for these districts are well-defined and were

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in place before the advent of unconventional drilling. During his years of residency, [REDACTED] enjoyed, and continues to enjoy, the protections provided by the zoning districts, including the authorization of agricultural pursuits. Based upon information and belief, [REDACTED] is exploiting the benefits of his R-1A zoning district currently seeking to sell a sizable portion of his acreage for residential development. Specifically, the intent of the R-1A district is to "promote[] the use of conservation subdivision to preserve open space and the rural qualities of the Township while maintaining a minimum half acre lot size requirement." See, Township Zoning Ordinance, at § 302. Moreover, one of the purposes of this district is to, "promote the preservation of the Township's agricultural land." *Id.*

Although the Township firmly believes in the propriety and legality of its Ordinance, in an attempt to accommodate [REDACTED] desire for drilling, the Township offered to have Council re-zone [REDACTED] to fall entirely within an Industrial zoning district, allowing drilling within a constitutionally-based zoning scheme and zoning district. This would have alleviated any issue that [REDACTED] raises with respect to authorized activities on his property which currently fall within the R-1A zoning district. [REDACTED] farm use would remain in place as a "pre-existing non-confirming use," and drilling could have been a "conditional use" but he admittedly declined this process. This opportunity would have allowed drilling on the [REDACTED]. It is also important to note that, despite years of farming operations, [REDACTED] never pursued drilling a gas well for the purposes he now advances, despite no limitation on shallow wells in the Township.

Moreover, based upon our reading of the statute as well as interpreting case law, it is the Township's position that the Ordinance in no way unlawfully prohibits or limits normal agricultural operations. On its face, the Township Ordinance does not impose any express or implied restrictions on normal agricultural activity. [REDACTED] alleged needs relating to his Range Resources lease¹ are entirely speculative and do not fall within ACRE prohibitions. [REDACTED] uses and enjoys his farm as he always has, and advances no limitations to his agricultural operations or pursuits as a result of the actions or activities of the Township.

[REDACTED] does not allege that the Township Ordinance prohibits or limits his ability to heat greenhouses on the [REDACTED]. Instead, [REDACTED] argues that the Township Ordinance does not allow the [REDACTED] to heat greenhouses in the manner that [REDACTED] asserts would be the most *economical*. Similarly, [REDACTED] raises his complaint regarding proposed expansion rather than any limitation on actual ongoing operations. ACRE's prohibition on "unauthorized local ordinances" does not require that the Township allow for a *preferred* method agricultural operation – as long as the agricultural operation itself is neither limited nor prohibited. Plainly, the Township's Ordinance does neither. Under [REDACTED] theory, zoning should not restrict his right to profit in any way on his property if any money received for any activity on his property could then be used for farming. As such, this nonsensical slippery slope approach leads to the emasculation of the zoning districts and the ill-

¹ The Township believes that the [REDACTED] Range Resources lease is now expired. In recent discussions with EQT, the natural gas operator currently securing leases in the Township, EQT advised that it has some interest in leasing the [REDACTED] and believes it can reach [REDACTED] for gas production from future well sites not on farm property. [REDACTED] was advised at a Township meeting of EQT's representations.

fated position that so long as money can be made for re-investment in the farm, any proposed use, (*i.e.*, steel mills, cement facilities, etc.), should be authorized. The result rendered if this theory is played out to its logical conclusion, is that zoning districts no longer further a legitimate use of the Township's police power and the zoning district itself would become unconstitutional. This approach violates the U.S. and Pennsylvania Constitutions, and denies neighboring citizens of the protections and expectations afforded by the existing R-1A zoning district – that non-compatible industrial uses would be authorized only in zoning districts consistent with that district's stated purpose, not within the R-1A District.

Further, [REDACTED] allegation that the Ordinance somehow limits his agricultural operation is unavailing in light of the assertion that the [REDACTED], "would have used the gas or the money from the gas to heat the greenhouses." Initially, Range Resources has no wells within the Township and, prior to the recent Ordinance enactment, Range never sought approval to drill wells in the Township. Secondly, Marcellus gas is not pipeline quality gas that could be used for the purposes that [REDACTED] has contemplated – *i.e.*, heating greenhouses. Its BTU content is too high and the gas is too wet, *i.e.*, propane, butane, and the gas would need to be treated at a processing plant miles away first before use in a private or commercial application. (It could not be piped back to [REDACTED] for use.)

Upon information received, the Township believes that the [REDACTED] entered into a non-surface oil and gas lease with Range Resources, which prohibits any surface activity, namely an active well site, on the [REDACTED] property. To that end, at the request and demand of [REDACTED], it would be impossible for the [REDACTED] to receive free gas to heat its greenhouses as production would merely be occurring underground. [REDACTED] chose this "non-surface" lease arrangement with the natural gas operator so as to knowingly limit the agricultural disruption on his farming operations and/or to ensure future potential residential development plans were not impacted by industrial operations. Consequently, to the extent that the Ordinance merely hampers [REDACTED] ability to receive money from an oil and gas lease, the terms of ACRE are not invoked.

The Township would ask that your office review [REDACTED] prior or current oil and gas lease(s) as part of this process and inquire into [REDACTED] negotiations with residential developments. Rather than raising a substantive concern with agricultural development, which is not hampered in any form, [REDACTED] current complaint is merely his thinly-veiled dissatisfaction with the Township's duly enacted and constitutionally-sound zoning decision which limits oil and gas drilling, like all other industrial operations, to areas that are industrially zoned. [REDACTED] himself has made the conscious decision to keep natural gas drilling off his property completely, and disallowed the use on his property by entering into a non-surface oil and gas lease. The parameters of ACRE do not have any bearing on the legality of the Township's zoning decisions, where agricultural operations are unaffected, as in this case.²

² As practical matter, [REDACTED] is, in effect, requesting that the Office of the Attorney General review the Township's Oil and Gas ordinance to determine the propriety of the Township's categorization of drilling operations. This review process is similar to that which was struck as unconstitutional by the Pennsylvania Supreme Court, whereby the Pennsylvania Utility Commission ("PUC") was to undergo a similar process.

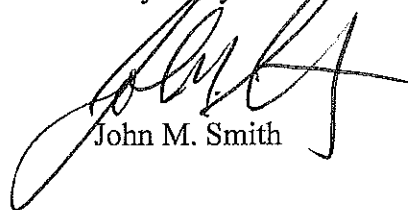
Moreover, per the terms of ACRE, certain limitations (or prohibitions) on normal agricultural operations are tolerated if the Township, "has expressed or implied authority under State law to adopt the ordinance; and is not prohibited or preempted under State law from adopting the ordinance." Accordingly, even if the Township's ordinance imposed some limitation on the [REDACTED] agricultural operation (which the Township denies), the ordinance would be acceptable under ACRE nonetheless because it is constitutionally-based, and therefore falls within the Township's authority under the Municipalities Planning Code ("MPC") as well as the U.S. and Pennsylvania Constitutions. To that end, I have attached for your review (**Exhibit B**) an opinion letter drafted by this office to the Peters Township Council which outlines the legality of the Township's Ordinance, including citation to binding legal authority which both expressly and impliedly grants the Township (and all Pennsylvania local governments) the authority to act as it did.

The Township successfully challenged a Pennsylvania statute ("Act 13") that was declared unconstitutional by the Pennsylvania Supreme Court. The Township recognized the constitutional rights of its citizens as set forth in Article 1 of the Pennsylvania Constitution, Pennsylvania's "Declaration of Rights" and passed its oil and gas ordinance in furtherance of those rights retained by their citizens. The Township maintains its police power to create zoning districts and enact zoning ordinances that place only proper compatible uses within defined zoning districts. It has properly utilized its police powers in this instance and has not, in any way, enacted an ordinance that would run afoul of ACRE.

As the Pennsylvania Attorney General was a named party in the Robinson Twp. litigation, and participated in those legal proceedings, it is well-aware of the law and the outcome of that case which directed that the Township enact ordinances which treat all industrial uses the same, including natural gas drilling. All industrial uses are provided for in the Township's industrial zoning district. [REDACTED] position is unavailing, unsupported and demonstrates absolutely no violation of ACRE. There has been no interference with his farming operations, which have remained and continues as a viable enterprise in the Township.

Your time and consideration into this matter is appreciated. If I can provide you with any additional information on behalf of the Township, please feel free to contact me accordingly.

Very Truly Yours,



John M. Smith

Enclosures
CC: Peters Township

OFFICIAL

PETERS TOWNSHIP
WASHINGTON COUNTY, PENNSYLVANIA

ORDINANCE NO. 804

AN ORDINANCE OF PETERS TOWNSHIP, WASHINGTON COUNTY, PENNSYLVANIA, AMENDING ORDINANCE CHAPTER 27 ZONING ORDINANCE OF THE TOWNSHIP CODE OF ORDINANCES, SPECIFICALLY SECTION 201 "DEFINITIONS", SECTION 300 "DISTRICT CLASSIFICATIONS" ELIMINATING "MINERAL EXTRACTION OVERLAY DISTRICT - MEOD", SECTION 303 "PERMITTED AND CONDITIONAL USES AND USES BY SPECIAL EXCEPTION BY ZONING DISTRICT" TABLE 2: "NON-RESIDENTIAL PERMITTED USE CHART", AND ELIMINATING SECTION 504 - A AND B "MINERAL EXTRACTION OVERLAY DISTRICT" AND SECTION 713 "MINERAL EXTRACTION; CONDITIONAL USES" AND SECTION 714 "COMPRESSION STATIONS" AND SECTION 715 "PROCESSING PLANTS".

WHEREAS, Peters Township has the duty and obligation to enact ordinances to protect the health and safety of its residents; and

WHEREAS, the Pennsylvania Municipalities Planning Code, Section 601, grants authority to Peters Township to enact Zoning Ordinances that protects and promotes the health, safety and the general welfare of its residents and Article 1 Sec. 27 of the Constitution mandates citizens have a right to clean air, clean water and a healthy environment; and,

WHEREAS, Peters Township believes that unconventional Mineral Extraction activity without proper regulation may pose hazards to the health, safety and general welfare of the residents of the Township and violate the citizen's right to clean air, clean water and a healthy environment; and



WHEREAS, Peters Township Council on August 14, 2014 adopted Resolution No. 08-01-14 declaring Chapter 27, Section 713 entitled "Mineral Extraction", Section 714 entitled "Compressor Stations" and Section 715 entitled "Processing Plants" of the Peters Township Code of Ordinances, and related Mineral Extraction Overlay Map invalid based on the December 19, 2013 Pennsylvania Supreme Court Decision which declared a number of provisions of Pennsylvania Act 13 of 2012 to be unconstitutional, including provisions related to Zoning of Oil and Gas Operations; and

WHEREAS, the Peters Township Council wishes to repeal and replace Ordinance No. 737 and Sections 1 – 4 of Ordinance No. 767; and

WHEREAS, the Peters Township Council wish to amend the Township Zoning Ordinance, Chapter 27, to provide for oil and gas development as a Conditional Use only in the Township's Industrial Zoning District; and

WHEREAS, the proposed Amendment has been reviewed and recommended for adoption by the Peters Township Planning Commission.

NOW, THEREFORE, be it ordained and enacted by the Council of Peters Township in meeting assembled, and it is hereby ordained and enacted by and with the authority of same as follows:

Section 1

§ 201. Definitions.

Shall be amended by adding the following:

Fresh Water – Water obtained from a potable water source of the Commonwealth such as a hydrant, stream, lake, water well, spring or other source that has not been treated or utilized in commercial or industrial operations.

Groundwater – Water in that portion of the generally recognized hydrologic cycle which occupies the pore spaces and fractures of saturated subsurface materials. Groundwater often

supplies wells and springs and is often withdrawn for domestic, agricultural, municipal, industrial and other beneficial uses.

Unconventional Gas Well – As defined in the Pennsylvania Oil & Gas Act an unconventional well is a bore hole drilled or being drilled for the purpose of or to be used for the production of natural gas from an unconventional formation or that is deviated from the vertical.

Water Impoundment Fresh – A lined depression excavation pit or facility situated in or upon the ground whether natural or artificial used to store fresh water

Water Impoundment Waste – A lined depression excavation pit or facility situated in or upon the ground, whether natural or artificial, used to store waste water fluid including but not limited to brine, fracturing fluid, produced water, recycled water, impaired water, flowback water, or any other fluid that does not satisfy the definition of “fresh water”.

- All other terms will be as defined in Pennsylvania’s Oil and Gas Act (Act 223) Title 58. Oil and Gas, Chapter 11, Oil and Gas Act

Section 2

§ 300. District Classifications.

Shall be amended by eliminating the following:

A. (2) Zoning Overlays.

MEOD Mineral Extraction Overlay District

Section 3

§ 303. Permitted and Conditional Uses and Uses by Special Exception by Zoning District.

Shall be amended by adding the following:

Table 2: Authorized Use Chart

	Residential				Non-residential/Industrial				Mixed Use			
	R-1A Single Family Conventional	R-1C Single Family Cluster	R-3 Village Residential	PRD Planned Residential Development	C-1 Neighborhood Commercial	C-2 General Commercial			VNC Village Neighborhood Commercial			
P	Permitted Use											
C	Conditional Use											
S	Use by Special Exception											
A	Accessory Use											

49	Post Office	S						P	P	P		P	P	P	P	P
50	Private Club	S				S	S	S	P			P		S		
51	Private Residence Garage	A	A	A	A	A	A				A					
52	Public, Private and Semi-Private Recreation Facilities	S	S	S	S	S	S	P	P	S	S		S	P	S	S
53	Public Works Facility	S						S	S	S	S	P	S	S	S	S
54	Research and Development											P			C	C
55	Restaurant, High Turnover with Drive-Thru								P							
56	Restaurant, High Turnover w/out Drive-Thru								P	P			P	P		
57	Restaurant, Medium Turnover w/out Drive-Thru							P	P	P			P	P		
58	Restaurant, Low Turn Over							P	P	P	C		P	P	P	P
59	Retail Stores							P	P	P			P	P		
60	Satellite Dish/ Antenna	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
61	School	S					S		P				P			P
62	Self-Storage Facility											P				
63	Sexually-Oriented Establishment								C							
64	Shed	A	A	A	A	A	A		A	A		A				
65	Single-Family Res. Rec. Facility	A	A	A	A	A	A									
66	Studio/Academies	S						P	P	P	P	P	P	P	P	P
67	Theatre/Auditorium								P				P	P		
68	Wholesale Landscaping Service											P				C
69	Veterinary Services							P	P		P	P	P	P	P	P
70	Warehouse											P				
71	All Other Uses											S				
72	Compressor Station											C				
73	Processing Plant											C				
74	Unconventional Gas Drilling											C				
75	Conventional Gas Drilling	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

Section 4

Section 504, set forth below, shall be repealed in its entirety.

§ 504. Mineral Extraction Overlay District

- A. The intent of the Mineral Extraction Overlay District (MEOD) is to provide areas within the Township where mineral extraction may occur and to enact regulations regarding the activities associated with mineral extraction which are not otherwise within the jurisdiction of federal and state regulations and from which the Township is not preempted by the Pennsylvania Oil and Gas Act. Peters Township believes that mineral extraction activity without proper regulation may pose hazards to the health, safety, morals, and general welfare of the residents of the Township. Therefore, the overlay district and associated regulations have been created in order to ensure proper location of mineral extraction activities within the township, minimize impacts on residential neighborhoods, public facilities, township infrastructure, and the environment, and ensure that all operations comply with all federal, state, and local regulations by obtaining all required permits.
- B. For full regulations within the overlay district, refer to §713 Mineral Extraction.

Section 5

§ 713. Mineral Extraction.

Shall be amended by repealing §713 and replacing with the following:

Unconventional oil and gas drilling sites shall be evaluated as a Conditional Use in all Industrial Zoning Districts subject to the following express standards and criteria:

- A. A Conditional Use application shall be accompanied with written permission from the property owner(s) who has legal or equitable title in and to the surface of the drill site or demonstrable documentation of the applicant's authority to occupy the surface for the purpose of mineral extraction. In addition, the application shall include the proposed pipeline route from the oil and gas drill site to the transmission line and how fluids will be brought to and from the site.
- B. Conditional Use approval is non-transferable without consent from Council, and shall automatically terminate, unless extended, if drilling is not commenced within one (1) year from the date of issuance of the conditional use. The conditional use approval may be extended by Council upon written request by the Operator. The Operator shall provide proof that the requested conditional use permit for such location has not changed.

- C. The unconventional drilling pad (limits of disturbance) shall maintain a minimum five hundred (500) foot setback to the property line. In addition, no protected structure shall be permitted to be constructed within five hundred (500) feet from the edge of the well pad disturbance.
- D. As part of the Conditional Use application, the Applicant shall have submitted all necessary applications for permits and plan approvals to the PA DEP. Prior to beginning the drilling site construction, the applicant shall submit to the Township a copy of all permits (General permits, well permit(s), joint permits, earth disturbance permit, ESCGP-1, etc.) issued by the PA DEP. In addition, the Township shall be provided copies of all plans (erosion and sedimentation control, grading, water management plan, water withdrawal plan, Pollution Prevention Contingency, alternate waste disposal, etc.) required and approved by the PA DEP. The Township Engineer shall be provided with a timeline and activity schedule and all required permits shall be maintained, commencing at site construction and continuing throughout the duration of drilling and production testing (hydraulic fracturing) operations. Any suspension or revocation of permits by PA DEP shall be reported to the Township and shall constitute a violation of Township zoning approval and may result in the suspension of zoning approval.
- E. Pre-Drilling, Post-Hydraulic Fracturing, and Baseline Water Survey Requirements – Prior to drilling and post-hydraulic fracturing, the Operator shall be responsible for testing all existing water supplies (surface and groundwater) within 2,500 feet of the surface location of the well. The purpose of testing is to determine the baseline quality and quantity of surface water and groundwater in the immediate vicinity of the proposed well site and to evaluate resultant changes that may occur or have an impact on the water supply of the site and surrounding area. If a landowner refuses to allow the Operator access to conduct a survey, the Operator shall show evidence of such refusal in accordance with PA Code Title 25, Chapter 78, §78.52 (f). In addition, prior to drilling, the Operator will be required to drill a test well outside of the limits of the well pad but no more than 750 feet from the well location to a depth that intersects all known or viable aquifers for the purposes of obtaining a baseline assessment of water quality in the vicinity of the site. The test well shall be located such that it is part of the hydrologic system of the drill site. All testing shall adhere to the following:
- a. Pre-drilling testing results, both from existing water supplies and from the Operator-drilled test well, shall be submitted as part of the Conditional Use application.
 - b. Post-hydraulic fracturing testing shall be completed no sooner than one (1) month after hydraulic fracturing activities have ceased and no later than two (2) months after hydraulic fracturing activities have ceased.
 - c. The post-hydraulic fracturing test results, both from existing water supplies and from the Operator-drilled test well, shall be submitted to the Township, PA DEP, and residents within 2,500 feet of the surface location of the well in accordance with PA Code Title 25, Chapter 78,

§78.52 "Predrilling or prealteration survey" within ten (10) days of their receipt.

- d. The Operator shall be responsible for all costs associated with drilling and testing and testing shall be done by an independent state-certified water testing laboratory agreed upon by the Township.
- e. Water Quantity Test – The Operator shall hire a consultant (hydrogeologist) agreed upon by the Township to conduct water quantity testing. The consultant shall submit a pre-testing and a pre-drilling plan to be approved by the Township. The consultant shall test for gallons per minute (gpm) flow rates, yield, groundwater levels, and other pertinent information for all viable aquifer zones via draw down tests or other suitable means. The consultant shall measure and record flow rates in gallons per minute (gpm) for all surface water sources. Groundwater levels and other pertinent information via draw down tests or other suitable means shall be measured from all available wells. Also, GPS coordinate information shall be recorded for all surface water and groundwater sites. The results shall be certified by the hydrologist.
- f. Water Quality Test - Operators shall test for the following list of parameters for all surface water and groundwater. The list is not exhaustive and the Township reserves the right to add additional parameters:

Analyte				
Inorganic	Trace Metal	Organic	Microbiology	Other
Alkalinity	Barium	Ethane	Total Coliform/E.Coli	Volatile Organic Compounds
Chloride	Calcium	Methane		Detergents (MBAS)
Conductivity	Iron	Propane		Total Organic Carbon
Hardness	Magnesium	Total Petroleum Hydrocarbons		Nitrate
Oil and Grease/Bromide	Manganese	Acetone		Radionuclides gross alpha, radium
Ph	Potassium			Radon
Sulfate	Sodium			Lead
Total Dissolved Solids	Strontium			Total Coliform Bacteria
Residue - Filterable	Arsenic			
Total Suspended Solids	Zinc			
Residue - Non Filterable	Aluminum			
Turbidity	Lithium			
Ethylene Glycol	Selenium			
	Boron			

- F. Pre-Drilling and Post-Hydraulic Fracturing Soil Survey Requirements – Prior to drilling and post-hydraulic fracturing, the Operator shall be responsible for testing soil conditions within the area of the drill site but no greater than 500 feet from the surface location of the well. The purpose of testing is to determine the baseline soil conditions in the immediate vicinity of the proposed well site and evaluate resultant changes that may occur or have an impact on the soils of the site and surrounding area.

- a. Pre-drilling testing results shall be submitted as part of the Conditional Use application.
- b. Post-hydraulic fracturing testing shall be completed no sooner than one (1) month after hydraulic fracturing activities have ceased and no later than two (2) months after hydraulic fracturing activities have ceased.
- c. The results shall be submitted to the Township and PA DEP within ten (10) days of their receipt.
- d. The Operator shall be responsible for all costs associated with sample collection and testing and testing shall be done by an independent state-certified testing laboratory agreed upon by the Township.
- e. Operators shall test for the following list of parameters for soils. The list is not exhaustive and the Township reserves the right to add additional parameters:

Analyte			
Inorganic	Trace Metal	Microbiology	Other
Alkalinity	Barium	Total Coliform/E.Coli	Volatile Organic Compounds
Chloride	Calcium		Nitrate
Hardness	Iron		Radionuclides gross alpha, radium
Oil and Grease	Magnesium		Lead
Ph	Manganese		
Sulfate	Potassium		
Residue - Filterable	Sodium		
Residue - Non Filterable	Strontium		
Bromide	Arsenic		
	Zinc		
	Aluminum		
	Lithium		
	Selenium		
	Boron		

- G. Access directly to State roads shall require Pennsylvania Department of Transportation (PADOT) Highway Occupancy Permit approval. Prior to initiating any work at a drill site, the Township shall be provided a copy of the Highway Occupancy Permit.
- H. The applicant must provide the Township with a plan showing the proposed truck routes to be utilized during the unconventional drilling operation. The proposed hauling routes must be designed to minimize the impact on Township roads. The Township reserves the right to designate reasonable required truck hauling routes consistent with the Pennsylvania Motor Vehicle Code and Pennsylvania Department of Transportation throughout the Township. The Township shall consider all potential routes and, when possible, designate routes that are the least intrusive to the Township, its operation, and the general public. When determining the least intrusive routes, the Township shall account for roadway jurisdiction, traffic, physical characteristics/conditions, location of school bus stops/routes, and the amount of residential units along potential routes. Routes

shall be coordinated with the school district to minimize impact on peak school bus operation hours. Operators shall be responsible for clearly posting designated routes with identification signs in a manner (style and location) approved by the Township. There will be no staging of trucks on local roads.

- I. The applicant or owner of the oil or gas well shall execute an excess maintenance agreement with the Township for a Type 2 permit as per the Pennsylvania Code Chapter 189.4(B) Road Bonding, and post a bond at the paved highway rate in favor of the Township in a form acceptable to the Township prior to beginning any work on a drill site. The bond is to guarantee restoration of Township roads and bridges damaged as a result of hauling associated with the drilling operation.
- J. An off-street area, at the entrance to the drill site and outside of the road right-of-way, shall be provided for vehicles to stand while gaining access so that normal flow of traffic on the public street is undisturbed. In accordance with Section 316, Driveways; Peters Township Zoning Ordinance - Driveways accessing the drill site shall be paved with an impervious material from the public street cart way fifty (50) feet into the drill site. The impervious material shall be in place prior to the commencement of the drilling operation. The first fifty (50) feet from existing edge of pavement extending fifty (50) feet into the site shall consist of the following material:
 - Compacted Subgrade
 - PADOT Class 4 Geotextile Fabric
 - 8" AASHTO #1 Crushed Aggregate Base Course
 - 2" PADOT 2A Aggregate (Choke Material)
 - 4" (Compacted) – Superpave 25 mm Binder Course

The remainder of the driveway to the well pad shall be constructed with the following material:

- Compacted Subgrade
- 8" AASHTO #1 Crushed Aggregate Base Course
- 2" – PADOT 2A Aggregate (Choke Material)

Proper and adequate storm water run-off controls for driveways shall be installed to prevent concentration of run-off onto adjacent properties or public streets.

- K. As part of the Conditional Use application, the applicant/owner shall provide the Peters Township Fire Department with a copy of the PA DEP approved preparedness, prevention and contingency (PPC) plan and all SDS sheets of all products brought to the site. The applicant shall, prior to drilling its first gas well in the Township, make available with at least thirty (30) days notice, at the applicant's sole expense, one appropriate group training program for emergency responders. Such training shall be made available at least annually during any year that drilling activities take place at approved drill sites.

- L. As part of the Conditional Use application, the Township and emergency management services shall be provided the name of the person supervising the drilling operation and a phone number where such person can be reached twenty-four (24) hours a day. Also, a list of contact information for all sub-contractors associated with the oil and gas drilling operations must be provided. The list shall include verification that all supervisors/operators and sub-contractors at the drill site are aware and understand this ordinance.
- M. The access driveway off the public road to the drill site shall be gated at the entrance to prevent illegal access into the drill site. The drill site assigned address shall be clearly visible on the access gate for emergency 911 purposes. In addition, the sign shall include the well name and number, name of the operator and the telephone number for a person responsible who may be contacted in case of emergency. In lieu of a gate the operator can provide 24/7 security on sites during the drilling operation.
- N. Lighting – No drill site lighting used for or associated with the drilling operation shall be positioned or directed in such a manner so that it shines directly upon public roads, adjacent property or property in the general vicinity of the drill site. Site lighting shall be directed downward and shielded so as to avoid glare on public roads and adjacent properties. Lumen levels shall not exceed zero (0) foot-candle at the property line over the ambient, which shall be taken at a point six (6) feet off the ground at least one (1) hour after sunset and at least one (1) hour before sunrise.
- O. Dust, vibration, odors. – All drilling operations shall be conducted in such a manner to minimize dust, vibration or noxious odors. All equipment used shall be constructed and operated so that vibrations, dust, odor or other harmful or annoying effects are minimized by the operations carried on at the drill site to avoid injury to or annoyance of persons living in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe.
- P. Noise –The Township may require acoustical blankets, sound walls, mufflers or other alternative methods as proposed by the Operator to ensure compliance depending on the location of a proposed drill site to adjacent residential properties. As part of the Conditional Use application, and prior to beginning the drill operation, the applicant shall establish the residual or background noise level baseline. The baseline shall be established over a seventy-two (72) hour period with at least one (1) twenty four (24) hour reading on a Saturday or Sunday. A noise consultant/engineer mutually agreed upon by the Township and owner/operator will be responsible for determining the residual background noise level baseline. The applicant, owner/operator shall be responsible for all costs associated with noise consultant/engineer.
 - a. The noise generated during construction, drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line

or one hundred feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the performance standard for noise set forth in §600.1 of the Zoning Ordinance As to non-residential and non-Protected Structures, the average ambient noise level as determined by the seventy-two hour evaluation shall not exceed the following:

- i. During drilling activities by more than sixty (60) decibels or ten (10) decibels over the ambient, whichever is greater, during the hours of 7:00 a.m. to 9:00 p.m.;
 - ii. During drilling activities by more than sixty (60) decibels or five (5) decibels over the ambient, whichever is greater, during the hours of 9:00 p.m. to 7:00 a.m.
- b. Since fluctuations in noise levels are inherent to mineral extraction activities, the Township has created a sliding scale which provides adjustments in the permitted level of noise generated during operations to create flexibility in the regulations and prevent repeated violations. Drilling activities are permitted to generate noise ten (10) decibels higher than the average ambient noise levels (Refer to §713 P.a.i) and the adjustments are in addition to that sound level. Adjustments to the preceding noise limits may only occur during the hours of 7:00 a.m. to 9:00 p.m. and are as follows;

Permitted Increase (dBA)	Duration of Increase (Minutes)
0-5	15
6-10	5
11-15	3
16-20	1
> 20	0

Note: The maximum cumulative time that the permitted increases in dBA may occur in one hour may not exceed fifteen (15) minutes. For instance, an operator shall not be permitted to allow a 10 dBA increase for 5 minutes and then a 5 dBA increase for 15 minutes, within the same hour. If 10 dBA are reached for 5 minutes, then 5 dBA may only occur for 10 minutes.

- c. If a complaint is received by any person using a Protected Structure for a lawful purpose, within a reasonable vicinity of a drill site, regarding noise generated during drilling and hydraulic fracturing activities, the Township will conduct a sound test to verify that a viable complaint exists. Upon confirmation by the Township that a possible noise violation exists, the Operator shall, within twenty-four hours of the receipt of the complaint

from the Township, continuously monitor for a forty-eight hour period at a point which is the closer to the complainant's building of:

- i. The complainant's Protected Structure property line nearest to the well site or equipment generating the noise, or
- ii. One hundred feet from the Protected Structure, whichever is closer.

If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary data to the Township no later than ten (10) business days following completion of the noise testing. Once the monitoring is complete, the Operator will meet with Township representatives and affected residents to discuss whether possible noise abatement measures are warranted if the permitted levels set herein were exceeded. The Township reserves the right to hire a noise consultant to do its own testing and investigation regarding the noise complaint.

Q. Impoundments shall be allowed only on the parcel/property where unconventional drilling site is occurring and shall only be used to support the particular unconventional drilling site where they are located, with approval for the impoundment at the discretion of Council as part of the conditional use process. No off-site impoundments, drill cuttings pits/reserve pits shall be permitted. Impoundments shall not use surface aerators. All drill site impoundments shall be secured with a temporary fence with a secured gate as follows:

1. The fence shall be a minimum of six (6) feet in height and chain link.
2. The fencing shall be in place throughout the drill operation and until the impoundment is removed.
3. The chain link fence shall have a minimum thickness of eleven (11) gauges.
4. Impoundments must comply with all state and federal laws in regards to leak detection and monitoring and must comply with EPA 9090 or any regulation that supersedes it.
5. Upon review of the application, Council may in its discretion require air modeling and monitoring of emissions coming off of impoundments.

R. At the time of Conditional Use application, a survey of the drill site showing the general area where associated gas production equipment (tanks or other surface installations) will be located and locations and distances to property lines shall be filed with the application. All sensitive natural features including but not limited to waterways, wetlands, steep slopes, and floodplains including those 100' outside the limits of disturbance, as defined on the approved PA DEP Erosion and Sedimentation Plan, must also be shown.

- S. Prior to drilling an oil and gas well or multiple oil and gas wells at a location, but no later than two (2) weeks beforehand, the Operator shall provide the following information to each resident within 1,000 feet of the planned surface location of the well(s):
- a. A copy of the well survey plat showing the locations(s) of the planned well(s) and well locations.
 - b. A general description of the planned operations at the planned well(s) and associated equipment used in the development of the well(s)
 - c. Operators shall test all water supplies within 1,000' of each well site and share the results with landowners and the Township. (Refer to §713 E.)
 - d. The contact information of the Operator, and
 - e. The availability of the Operator to hold a meeting with such residents to present Operator's plans for the well(s) and to allow for questions and answers. The meeting(s) shall be held prior to well site construction.
- T. Any on-site associated gas production equipment (well head, separator, condensate tanks, and pipeline) shall be painted an earth tone color to blend in with the surrounding area. An earth tone color shall be neutral colors and include sand, gray, green and unobtrusive shades of brown, or other neutral colors, as approved by the Planning Director.
- U. The Township may, at its sole discretion, require permanent fencing (Refer to §713 Q for specifications) and or landscaping to buffer the post-drilling facilities or gas production equipment from adjacent properties. All on-site gas production equipment shall comply with Section 304, I Dimensional Tables – Table 4 Non-Residential District Dimensions; Zoning Ordinance.
- V. Any damage to public property caused by such operations must be repaired and restored within sixty (60) days of completing the drilling operation or as agreed to by Peters Township. The repairs shall meet or exceed prior conditions.
- W. After any spill, leak or malfunction, the operator shall notify the Township Manager or Fire Chief within 4 hours of non-emergency spill or immediately for an emergency situation and the operator shall notify Township officials when cleanup will begin. Operator will remove or cause to be removed to the satisfaction of the Peters Township Fire Chief and the PA DEP inspectors all waste materials from any public or private property affected by such spill, leak or malfunction. Clean-up operations must begin immediately upon knowledge that a spill, leak or malfunction occurs and alert the Township of any spills, leaks or malfunctions.
- X. The public street entrance at the property on which an unconventional drill site is located shall at all times be kept free of mud, debris, trash or other waste materials. Refer to Peters Township Code of Ordinances, Chapter 21 Streets and Sidewalks, Part 3 Unlawful Deposits.

- Y. The facility and/or its operation shall comply with all applicable permits and requirements of the PA DEP, the United States Environmental Protection Agency, and any other governmental authority having jurisdiction over its operations and with all federal, state and local laws, ordinances and regulations promulgated to protect the environment or otherwise relating to environmental matters. In its Conditional Use Application, the applicant shall provide environmental impact studies that analyze the impact of the proposed well site on Peters Township citizens' constitutionally protected rights to clean air and pure water under Art. 1 Sec. 27 of the Pennsylvania Constitution (The Environmental Rights Amendment). These studies shall be prepared by qualified Environmental individuals and shall include air modeling and hydrogeological studies as potential pathways that a spill or release of fluid may follow, and vibration studies and sound studies. The applicant shall have the burden of persuasion to demonstrate that the proposed use will not affect the health, safety or welfare of the citizens of Peters Township or any other potentially affected landowner.
- Z. The applicant or unconventional drill site operator shall take all necessary precautions to ensure the safety of persons in areas established for road crossings and/or adjacent to roadways, during periods of anticipated heavy or frequent truck traffic to and from the drill site. Flagmen shall be present and used to ensure the safety of motorists and pedestrians and take measures that may include adequate signs and/or other warning measures for truck and vehicular traffic.
- AA. All unconventional drill site construction (grading, installation of erosion & sedimentation controls, roadway construction, etc.) shall be done in accordance with Township construction hours – 7:00 am to 7:00 pm Monday through Saturday. Any burning of trees or brush shall be done in accordance with burning regulations using an air curtain.
- BB. During the active operation at an unconventional drill site Township Staff or consultants designated by the Township Manager shall have access to the site to determine continuing compliance with the conditional use approval.
- CC. Peters Township reserves the right to impose any other additional conditions necessary to protect the public health, safety and welfare of its residents and to assure protection under Article 1 Section 27 in order to address any unique characteristics of a particular drilling site which are not otherwise within the jurisdiction of federal and state regulations in accordance with the Pennsylvania Municipalities Planning Code (PAMPC).
- DD. Indemnification and Express Negligence Provisions –
The operator shall fully defend, protect, indemnify, and hold harmless Peters Township, its departments, officials, officers, agents, employees and contractors from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, legal

and expert fees, and expenses incurred in defense of Peters Township including, without limitation, personal injuries and death in connection therewith which may be made or asserted by any third parties on account of, arising out of, or in any way incidental to or in connection with the performance by the operator.

Section 6

§ 714. Compressor Stations

Section 714 shall be repealed and replaced with the following:

Compressor stations sites shall be evaluated as a Conditional Use in all Industrial Zoning Districts subject to the following express standards and criteria:

- A. Compressor stations shall only be permitted to occur on property that is zoned Industrial. The Applicant shall strive to consider locations for its temporary and permanent operations where prudent and possible so as to minimize interference with Township residents' enjoyment of their property and future Township development activities. In its Conditional Use Application, the applicant shall provide environmental impact studies that analyze the impact of the proposed compressor station on Peters Township citizens' constitutionally protected rights to clean air and pure water under Art. 1 Sec. 27 of the Pennsylvania Constitution (The Environmental Rights Amendment). These studies shall be prepared by qualified Environmental individuals and shall include air modeling and hydrogeological studies as potential pathways that a spill or release of fluid may follow, and vibration studies and sound studies. The applicant shall have the burden of persuasion with respect to the obligation to demonstrate that the proposed use will not affect the health, safety or welfare of the citizens of Peters Township or any other potentially affected landowner. The Applicant must present an expert witness testimony to demonstrate the location of the facility will not unreasonably adversely affect any of the following:
 - a. Lawful existing or authorized uses of adjacent properties
 - b. Neighboring flood-prone or landslide prone areas
 - c. Agriculture and farmland
- B. A Conditional Use application for a compressor station shall be accompanied with written permission from the property owner(s) who has legal or equitable title in and to the surface rights of the property or a court order recognizing the Operator's authority to occupy the surface. If the operator owns the property, proof must be provided.
- C. Conditional Use approval is non-transferable without consent from Council, and shall automatically terminate, unless extended, if substantial construction is not commenced and sustained within one (1) year from the date of issuance of the conditional use. The conditional use approval may be extended by Council upon

written request by the Operator. The Operator shall provide proof that the requested conditional use permit for such location has not changed.

- D. As part of the Conditional Use application, the Township and emergency management services shall be provided the name of the person supervising the compressor station and a phone number where such person can be reached twenty-four (24) hours a day. Also, a list of contact information for all sub-contractors associated with the operations of the station must be provided. The list shall include verification that all supervisors/operators and sub-contractors at the site are aware and understand this ordinance.
- E. All compressor stations shall be completely enclosed by a building.
 - a. The building shall be constructed in a manner that the architectural character complements the existing character of the area. The building shall employ architectural features including but not limited to sloped roofs, stone and brick accents, steeples, cupolas, etc.
 - b. The building shall employ sound proof type walls and all equipment associated with the compressor station shall be enclosed within the building. All acoustical structures shall be constructed of metal, masonry, or other structurally sound material as approved by the Planning Director.
- F. Access directly to state roads shall require Pennsylvania Department of Transportation (PADOT) Highway Occupancy Permit approval. Prior to initiating any work at the station, the Township shall be provided a copy of the Highway Occupancy Permit. Access Roads shall also comply with the following:
 - a. Access roads must be 50' from adjacent property lines unless written consent is given.
 - b. First 50' must be paved. Then 150' must be limestone in a manner that reasonably minimizes water, sediments, or debris carried onto any public road.
 - c. If the access road is less than 200' the entire road must be limestone.
- G. The access driveway off the public road to the station shall be gated at the entrance to prevent illegal access into the site. The site assigned address shall be clearly visible on the access gate for emergency 911 purposes. In addition, the sign shall include the station name and number, name of the operator and the telephone number for a person responsible who may be contacted in case of emergency.
- H. The Operator must provide a plan for the transmission of gas, water, oil, or other substances to and from the station. The Operator shall identify the location of, but not limited to, gathering lines, compressors, and other mid and downstream facilities located within the Township and extending 800 ft. beyond the Township boundary. The Operator shall provide the Township with all state and federal

permits that have been acquired, and bonding agreements, and proof of ability to operate such pipelines.

- I. Compressor stations shall utilize electric motors rather than internal combustion engines. Council may approve the use of internal combustion engines as part of the conditional use approval if deemed necessary upon a showing by the applicant that electric power is unavailable. However, if gas is used as fuel, it is to be consumer quality gas and not raw gas or bypassed gas, and any exhaust from any internal combustion engine or compressor used in connection with the station, used by any production equipment, or used in development shall not be discharged into the open air unless it is equipped with (i) an exhaust muffler or (ii) an exhaust box. The exhaust muffler or exhaust box shall be constructed of non-combustible materials designed and installed to suppress noise and disruptive vibrations. Moreover, all such equipment with an exhaust muffler or exhaust box shall be maintained in good operating condition according to manufacturer's specifications.
- J. Noise – The Township may require acoustical blankets, sound walls, mufflers or other alternative methods to ensure compliance depending on the location of a proposed station to adjacent residential properties. As part of the Conditional Use application, and prior to construction, the Operator shall establish the residual or background noise level baseline. The baseline shall be established over a seventy-two (72) hour period with at least one (1) twenty four (24) hour reading on a Saturday or Sunday. A noise consultant/engineer mutually agreed upon by the Township and owner/operator will be responsible for determining the residual background noise level baseline. The Operator shall be responsible for all costs associated with the noise consultant/engineer.
 - a. The noise generated during construction, drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line or one hundred feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the performance standard for noise set forth in §600.1 of the Zoning Ordinance As to non-residential and non-Protected Structures, the average ambient noise level, as determined by the seventy-two hour evaluation, shall not exceed the following:
 - i. During station or plant activities by more than ten (10) decibels during the hours of 7:00 a.m. to 9:00 p.m.;
 - ii. During station or plant activities by more than five (5) decibels during the hours of 9:00 p.m. to 7:00 a.m.
 - b. If a complaint is received by any person using a Protected Structure for a lawful purpose, within a reasonable vicinity of a compressor station, regarding noise generated by compressor station operations, the Township will conduct a sound test to verify that a viable complaint exists. Upon

confirmation by the Township that a possible noise violation exists, the Operator shall, within twenty-four hours of the receipt of the complaint from the Township, continuously monitor for a forty-eight hour period at a point which is the closer to the complainant's building of:

- i. The complainant's Protected Structure property line nearest to the well site or equipment generating the noise, or
- ii. One hundred feet from the Protected Structure, whichever is closer.

If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary data to the Township no later than ten (10) business days following completion of the noise testing. Once the monitoring is complete, the Operator will meet with Township representatives and affected residents to discuss whether possible noise abatement measures are warranted, if the permitted levels set further herein were exceeded. The Township reserves the right to hire a noise consultant to do its own testing and investigation regarding the noise complaint.

- K. Drip pans must be placed in any location, under equipment, that has the potential to leak.
- L. All condensate tanks shall be equipped with vapor recovery and/or vapor destruction units.
- M. All structures including but not limited to pumping units, storage tanks, buildings, and structures shall be painted a neutral color, compatible with the surrounding uses. Neutral colors shall include sand, gray, green and unobtrusive shades of brown, or other neutral colors, as approved by the Planning Director.
- N. Compressor stations shall be inspected by the fire department prior to operation. During the active operation at the compressor station Township Staff or consultants designated by the Township Manager shall have access to the site to determine continuing compliance with the conditional use approval.
- O. Applicant will reimburse the Township for all reasonable and direct professional consultant fees incurred by the Township related to site inspection, approval process, or for specialized work called for in the permit.
- P. Peters Township reserves the right to impose any other additional conditions necessary to protect the public health, safety and general welfare of its residents in order to address any unique characteristics of a particular compressor station site which are not otherwise within the jurisdiction of federal and state regulations in accordance with the Pennsylvania Municipalities Planning Code (PAMPC).

- Q. Indemnification and Express Negligence Provisions –
The operator shall fully defend, protect, indemnify, and hold harmless Peters Township, its departments, officials, officers, agents, employees and contractors from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, legal and expert fees, and expenses incurred in defense of Peters Township including, without limitation, personal injuries and death in connection therewith which may be made or asserted by any third parties on account of, arising out of, or in any way incidental to or in connection with the performance by the operator.
- R. The facility and/or its operation shall comply with all applicable permits and requirements of the PA DEP, the United States Environmental Protection Agency and any other governmental authority having jurisdiction over its operations and with all federal, state and local laws, ordinances and regulations promulgated to protect the environment or otherwise relating to environmental matters.
- S. The operator shall be required to provide notice of any spills and/or releases to the Township.

Section 7

§ 715. Processing Plants

Shall be amended by repealing §715 and replacing with the following:

Processing plant sites shall be evaluated as a Conditional Use in all Industrial Zoning Districts subject to the following express standards and criteria:

- A. Processing plants shall only be permitted to occur on property that is zoned Industrial. The Applicant shall strive to consider locations for its temporary and permanent operations where prudent and possible so as to minimize interference with Township residents' enjoyment of their property and future Township development activities. In its Conditional Use Application, the applicant shall provide environmental impact studies that analyze the impact of the proposed compressor station on Peters Township citizens' constitutionally protected rights to clean air and pure water under Art. 1 Sec. 27 of the Pennsylvania Constitution (The Environmental Rights Amendment). These studies shall be prepared by qualified Environmental individuals and shall include air modeling and hydrogeological studies as potential pathways that a spill or release of fluid may follow, and vibration studies and sound studies. The applicant shall have the burden of persuasion with respect to the obligation to demonstrate that the proposed use will not affect the health, safety or welfare of the citizens of Peters Township or any other potentially affected landowner. The Applicant must present an expert witness testimony to demonstrate the location of the facility will not unreasonably adversely affect any of the following:

- a. Lawful existing or authorized uses of adjacent properties
 - b. Neighboring flood-prone or landslide prone areas
 - c. Agriculture and farmland
- B. A Conditional Use application for a processing plant shall be accompanied with written permission from the property owner(s) who has legal or equitable title in and to the surface rights of the property or a court order recognizing the Operator's authority to occupy the surface. If the operator owns the property, proof must be provided.
- C. Conditional Use approval is non-transferable without consent from Council, and shall automatically terminate, unless extended, if substantial construction is not commenced and sustained within one (1) year from the date of issuance of the conditional use. The conditional use approval may be extended by Council upon written request by the Operator. The Operator shall provide proof that the requested conditional use permit for such location has not changed.
- D. As part of the Conditional Use application, the Township and emergency management services shall be provided the name of the person supervising the processing plant and a phone number where such person can be reached twenty-four (24) hours a day. Also, a list of contact information for all sub-contractors associated with the operations of the plant must be provided. The list shall include verification that all supervisors/operators and sub-contractors at the site are aware and understand this ordinance.
- E. Access directly to state roads shall require Pennsylvania Department of Transportation (PADOT) Highway Occupancy Permit approval. Prior to initiating any work at the plant, the Township shall be provided a copy of the Highway Occupancy Permit. Access Roads shall also comply with the following:
- a. Access roads must be 50' from adjacent property lines unless written consent is given.
 - b. First 50' must be paved. Then 150' must be limestone in a manner that reasonably minimizes water, sediments, or debris carried onto any public road.
 - c. If the access road is less than 200' the entire road must be limestone.
- F. The access driveway off the public road to the plant shall be gated at the entrance to prevent illegal access into the site. The site assigned address shall be clearly visible on the access gate for emergency 911 purposes. In addition, the sign shall include the plant name and number, name of the operator and the telephone number for a person responsible who may be contacted in case of emergency.
- G. The Operator must provide a plan for the transmission of gas, water, oil, or other substances to and from the plant. The Operator shall identify the location of, but not limited to, gathering lines, compressors, and other mid and downstream

facilities located within the Township and extending 800 ft. beyond the Township boundary. The Operator shall provide the Township with all state and federal permits that have been acquired, and bonding agreements, and proof of ability to operate such pipelines.

- H. Processing plants shall utilize electric motors rather than internal combustion engines. Council may approve the use of internal combustion engines as part of the conditional use approval if deemed necessary upon a showing by the applicant that electric power is unavailable. However, if gas is used as fuel, it is to be processed gas and any exhaust from any internal combustion engine or compressor used in connection with the plant, used by any production equipment, or used in development shall not be discharged into the open air unless it is equipped with (i) an exhaust muffler or (ii) an exhaust box. The exhaust muffler or exhaust box shall be constructed of non-combustible materials designed and installed to suppress noise and disruptive vibrations. Moreover, all such equipment with an exhaust muffler or exhaust box shall be maintained in good operating condition according to manufacturer's specifications.
- I. Noise – The Township may require acoustical blankets, sound walls, mufflers or other alternative methods to ensure compliance depending on the location of a proposed plant to adjacent residential properties. As part of the Conditional Use application, and prior to construction, the Operator shall establish the residual or background noise level baseline. The baseline shall be established over a seventy-two (72) hour period with at least one (1) twenty four (24) hour reading on a Saturday or Sunday. A noise consultant/engineer mutually agreed upon by the Township and owner/operator will be responsible for determining the residual background noise level baseline. The Operator shall be responsible for all costs associated with noise consultant/engineer.
 - a. The noise generated during construction, drilling and hydraulic fracturing activities when measured at the nearest Protected Structure property line or one hundred feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure, shall not exceed the performance standard for noise set forth in §600.1 of the Zoning Ordinance. As to non-residential and non-Protected Structures, the average ambient noise level, as determined by the seventy-two hour evaluation, shall not exceed the following:
 - i. During station or plant activities by more than ten (10) decibels during the hours of 7:00 a.m. to 9:00 p.m.;
 - ii. During station or plant activities by more than five (5) decibels during the hours of 9:00 p.m. to 7:00 a.m.
 - b. If a complaint is received by any person using a Protected Structure for a lawful purpose, within a reasonable vicinity of a processing plant, regarding noise generated by processing plant operations, the Township

will conduct a sound test to verify that a viable complaint exists. Upon confirmation by the Township that a possible noise violation exists, the Operator shall, within twenty-four hours of the receipt of the complaint from the Township, continuously monitor for a forty-eight hour period at a point which is the closer to the complainant's building of:

- i. The complainant's Protected Structure property line nearest to the well site or equipment generating the noise, or
- ii. One hundred feet from the Protected Structure, whichever is closer.

If the Operator engages in any noise testing as required by this Ordinance, it will provide preliminary data to the Township no later than ten (10) business days following completion of the noise testing. Once the monitoring is complete, the Operator will meet with Township representatives and affected residents to discuss whether possible noise abatement measures are warranted, if the permitted levels set further herein were exceeded. The Township reserves the right to hire a noise consultant to do its own testing and investigation regarding the noise complaint.

- J. Drip pans must be placed in any location, under equipment, that has the potential to leak.
- K. All condensate tanks shall be equipped with vapor recovery and/or vapor destruction units.
- L. All structures including but not limited to pumping units, storage tanks, buildings, and structures shall be painted a neutral color, compatible with the surrounding uses. Neutral colors shall include sand, gray, green and unobtrusive shades of brown, or other neutral colors, as approved by the Planning Director.
- M. Processing plants shall be inspected by the fire department prior to operation. During the active operation at the processing plant Township Staff or consultants designated by the Township Manager shall have access to the site to determine continuing compliance with the conditional use approval.
- N. Applicant will reimburse the Township for all reasonable and direct professional consultant fees incurred by the Township related to site inspection, approval process, or for specialized work called for in the permit.
- O. Peters Township reserves the right to impose any other additional conditions necessary to protect the public health, safety and general welfare of its residents in order to address any unique characteristics of a particular processing plant site which are not otherwise within the jurisdiction of federal and state regulations in accordance with the Pennsylvania Municipalities Planning Code (PAMPC).

- P. Indemnification and Express Negligence Provisions --
The operator shall fully defend, protect, indemnify, and hold harmless Peters Township, its departments, officials, officers, agents, employees and contractors from and against each and every claim, demand, or cause of action and any and all liability, damages, obligations, judgments, losses, fines, penalties, costs, legal and expert fees, and expenses incurred in defense of Peters Township including, without limitation, personal injuries and death in connection therewith which may be made or asserted by any third parties on account of, arising out of, or in any way incidental to or in connection with the performance by the operator.
- Q. The facility and/or its operation shall comply with all applicable permits and requirements of the PA DEP, the United States Environmental Protection Agency and any other governmental authority having jurisdiction over its operations and with all federal, state and local laws, ordinances and regulations promulgated to protect the environment or otherwise relating to environmental matters.

Section 8

That if any section, subsection, sentence, clause 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 validity of the remaining portions thereof.

Section 9

That all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.


Section 10

That this ordinance shall be in full force and effect from and after its passage and approval.

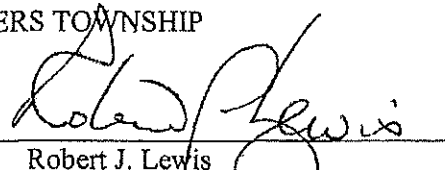
BE IT ORDAINED AND ENACTED BY the Township of Peters, Washington County,

Pennsylvania this 26 day of September 2016.

ATTEST:


Paul Lauer
Township Manager

PETERS TOWNSHIP

By: 
Robert J. Lewis
Chairman of Council



SMITH BUTZ
A LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

125 Technology Drive, Suite 202, Bailey Center I, Southpointe
Canonsburg, PA 15317

September 15, 2016

VIA ELECTRONIC and FIRST CLASS MAIL

Peters Township Council
Peters Municipal Building
620 E. McMurray Road
McMurray, PA 15317

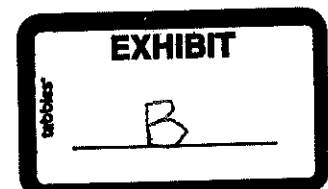
RE: Peters Township Proposed Oil and Gas Ordinance

Dear Council:

Please be advised that I have been asked to provide an opinion as to the rationale for the proposed oil and gas ordinance and the legalities of its overall features. Like many municipalities that are confronting current or potential shale gas drilling operations in their communities, these issues are often seen as complicated and extremely important for various factions of your citizens. As Peters Township joined other municipalities in challenging the Pennsylvania Oil and Gas Law of 2012 "Act 13" in the Robinson Township case wherein both the Pennsylvania Commonwealth Court and the Pennsylvania Supreme Court struck down various portions of the statutory scheme as unconstitutional, Peters Township is aware of the decisions and more importantly the rationale that we advanced, and which the courts adopted in striking the unconstitutional portions of the law.

As elected officials, all of you swore an oath to abide by the restrictions on governmental power set forth in both the Pennsylvania Constitution and the Constitution of the United States. *See* 53 P.S. § 65501. The primary Constitutional provisions that the State ignored and violated in passing "Act 13" are found in Article I of the Pennsylvania Constitution. Article I of the Pennsylvania Constitution is Pennsylvania's "Declaration of Rights," the Pennsylvania version of the United States Constitution's "Bill of Rights". These Declarations found in Article I of the Pennsylvania Constitution are inherent rights **retained by the citizens** and the Constitution acts as a limit on government action that would serve to abridge these rights. Local government must pass no law that would violate their citizens' rights set forth in Article I. It is within this legal framework that local municipal officials are both authorized to act and constrained from passing legislation as it relates to all zoning, including oil and gas ordinances.

As presently drafted, the ordinance seeks to treat oil and gas activities like all other **industrial uses** in Peters Township. The ordinance strives to comply with existing laws that recognize zoning as not a mere "policy" decision but rather a "constitutional" decision that impacts individuals' inherent constitutional rights. Pennsylvania courts have defined oil and gas drilling as industrial uses of land.



In *Robinson Township*, a plurality of Justices correctly recognized that oil and gas activities are considered an “industrial use” of land when describing Pennsylvania’s Oil and Gas Act as a “new regulatory regime permitting **industrial uses** as a matter of right in every type of pre-existing zoning district.” *Robinson Twp. et al. v. Commonwealth, et al.*, 83 A.3d 01, 979) Pa. 2013). “As Challengers duly note, these **industrial-like operations** include blasting of rock and other material, noise from the running of diesel engines, sometimes nonstop for days, traffic from construction vehicles, tankers, and other heavy-duty machinery, the storage of hazardous materials, constant bright lighting at night, and the potential for life- and property-threatening explosions and gas well blowouts.” *Robinson Twp.*, 83 A.3d at 1005 (Pa. 2012) (J. Baer concurring). “Zoning ordinances segregate industrial districts from residential districts, and there is segregation of the noises and odors necessarily incident to the **operation of industry** from those sections in which the homes are located.” 52 A. 3d 463, (Pa. Cmwlt 2012). (emphasis added).

Article I, Section 1 of the Pennsylvania Constitution guarantees individuals’ ability to acquire, possess and protect property and to use that property as the individual sees fit. *See*, PA. CONST. Art. I, Sec 1; *Appeal of Girsh*, 263 A.2d 395, 397, n. 3 (Pa. 1970). Because of the fundamental nature of citizens’ rights to the use of their property, these rights can only be limited by government action that is designed to protect the lives, health, morals, comfort and general welfare of the populace. *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 241, (1978) (rehearing denied); *In re Appeal of Realen Valley Forge Greenes Associates*, 838 A.2d 718, 728 (Pa. 2003). This is referred to as the “police power” of government.

To be constitutional, police power restrictions on the use of real property, expressed through zoning regulations, must be designed to *protect* citizens by ensuring that an individual’s use of his or her real property will not cause harm to neighbors or infringe upon the neighbors’ property rights and interests. *Hopewell Township Board of Supervisors v. Golla*, 452 A.2d 1337, 1341-42 (Pa. 1982). “Zoning is an extension of the concept of a public nuisance **which protects property owners from activities that interfere with the use and enjoyment of their property.**” *Robinson Township v. Commonwealth*, 52 A.3d 463, 481 (Pa. Commw. Ct. 2012) (emphasis added). Individuals are protected in a zoning scheme **by the establishment of zoning districts** which, according to the Pennsylvania Municipalities Planning Code (“MPC”), must be created to promote, protect and facilitate the public health, safety, morals, general welfare and coordinated and practical community development. 53 P.S. § 10604; *See also*, *Best v. Zoning Board of Adjustment of the City of Pittsburgh*, 141 A.2d 606, 610 (Pa. 1958). The MPC requires that “. . . [t]he provisions of all zoning ordinances may be classified so that different provisions may be applied to different classes of situations, uses and structures. . . [w]here zoning districts are created, **all provisions shall be uniform for each class of uses or structures, within each district.** . . .” 53 P.S. § 10605 (emphasis added). The Pennsylvania Commonwealth Court noted that “[u]se districts are often further sub-classified, for instance, into residential districts and then restricted to single-family houses and those in which multiple-family or apartment structures are permitted; commercial districts into central and local, or those in which light manufacturing is permitted or excluded; for heavy but non-nuisance types of industry and nuisance or unrestricted districts.” *Robinson Township*, 52 A.3d at 482.

This is in accord with the United States Supreme Court's foundational holding in Village of Euclid, Ohio v. Ambler Realty, Co., that the hallmark of constitutional zoning is the grouping of compatible uses together. 272 U.S. 365, 388, (1926) ("A nuisance may be merely a right thing in the wrong place."); United Artists Theater Circuit, Inc. v. City of Philadelphia, 595 A.2d 6 (Pa. 1991) (reargument granted and reversed on other grounds 635 A.2d 612); Huntley & Huntley, Inc. v. Borough Council of the Borough of Oakmont, 964 A.2d 855, 866 (2009) (internal quotations omitted) (emphasis added). This has been termed the "reciprocity of advantage." In re Realen Valley Forge Greenes Associates, 838 A.2d 718, 729 (Pa. 2003) *citing* United Artists Theater Circuit Co., Inc., 595 A.2d 6, 13 (Pa. 1991) ("**all property owners in a designated area are placed under the same restrictions, not only for the benefit of the municipality as a whole but also for the common benefit of one another**") (emphasis added). As the Pennsylvania Supreme Court has explained, constitutionally based zoning is the "legislative division of a community into areas in each of which **only certain designated uses of the land are permitted** so that the community may develop in an orderly manner in accordance with a comprehensive plan." Best, at 609 (emphasis added). The United States Supreme Court has held that proper zoning is completed by the creation of "**districts in which only compatible uses are allowed and incompatible uses are excluded.**" 514 U.S. 725, 732-733 (1995)

Article I, Section 1 of the Pennsylvania Constitution and the 5th and 14th Amendments to the United States Constitution speak to a citizens' right to "Due Process" and, in this context, limitation on use of property, which in turn fosters expectations and reliance by citizens that only compatible uses will be allowed in a given zoning district and that their current use, i.e. residential or agricultural, will not be threatened by the inclusion of an incompatible industrial activity.

The Commonwealth Court in *Robinson Twp.* described the essence of zoning and the need for compatibility:

The public interest in zoning is in the development and use of land in a manner consistent with local demographic and environmental concerns. [The Pennsylvania Oil Gas Act Section 3304] requires zoning amendments that must be normally justified on the basis that they are in accord with the comprehensive plan, **not to promote oil and gas operations that are incompatible with the uses by people who have made investment decisions regarding businesses and homes on the assurance that the zoning district would be developed in accordance with comprehensive plan and would only allow compatible uses.**

Robinson Twp., 52 A.3d at 484 (Pa. Cmwlth 2012). (emphasis added).

In my opinion, Peters Township's proposed oil and gas ordinance seeks to comply with Article I, Sections 1 and 27 of the Pennsylvania Constitution and the 5th and 14th Amendments of the United States Constitution, as it authorizes shale gas development activities as conditional uses in industrial districts.

It seems that some industry positions in the past have sought to minimize the Robinson decisions around the fallacy that the Pennsylvania Supreme Court's determination and analysis in Robinson Township is not binding or of precedential value. More specifically, some point to Pennsylvania Commonwealth Court's decision, in Pennsylvania Environmental Defense Foundation v. Commonwealth of Pennsylvania, found that Robinson Township "to be nonbinding as legal precedent". This statement creates a false premise and actually conflicts with the Commonwealth Court's analysis in Pennsylvania Environmental Defense Foundation.

Whereas the Pennsylvania Supreme Court's holding in Robinson Township has been portrayed by some as a novel decision outside the ambit of prior precedent, it actually was, at its core, an application of existing and well-settled constitutional principles of the limits of governmental power in Article I of the Pennsylvania constitution to the field of oil and gas development. Article I, Section 27 of the Pennsylvania Constitution provides that:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

See, PA. CONST. Art. I, Sec 27. In Robinson Township, the Pennsylvania Supreme Court evaluated whether the governmental action of the passage of zoning legislation through "Act 13" served as a violation of the *inherent* right of the people to clean air and pure water. Finding that the Pennsylvania General Assembly did not evaluate the impact of its allowance of oil and gas development within unique, localized communities, the Pennsylvania Supreme Court found that "Act 13" abridged citizens' rights that are protected in Article I, Section 27 of the Pennsylvania Constitution. Simply put, the Pennsylvania Supreme Court's decision, while a plurality opinion in Robinson Township, was an application of basic constitutional principles. Those who contest the precedential value of Robinson Township decision miss the "big picture" which is the fact that the Pennsylvania Constitution, not the Pennsylvania Supreme Court, prohibited the General Assembly's actions in the passage of "Act 13".

The reliance by some on the Pennsylvania Environmental Defense Foundation is misplaced. First, it is not a zoning case. Second, the Pennsylvania Supreme Court is not bound by pronouncements of the Commonwealth Court. Third, it is inconsistent to credit the Pennsylvania Commonwealth Court's statements in Pennsylvania Environmental Defense Foundation regarding the precedential value of Robinson Township and then to ignore other statements in Pennsylvania Environmental Defense Foundation. In Pennsylvania Environmental Defense Foundation, Judge Brobson affirmed the Robinson Township court's treatment of Article I, Section 27 of the Pennsylvania Constitution, when he wrote that "[t]he first clause of the Environmental Rights Amendment requires each branch of government to consider in advance of proceeding the environmental effect of any proposed action on the constitutionally protected features." 108 A.3d 140, 156 (Pa. Commw. Ct. 2015) (emphasis added) citing Robinson Township, 83 A.3d at 952. That is the hallmark of Robinson Township -

that Article I, Section 27 of the Pennsylvania Constitution prohibits a governmental body from taking any action that may impact the air or water without knowing the effects of its action and determining that citizens' inherent rights will not be abridged.

The *restrictions* on this Board's authority to act, as set forth in Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution, must guide its review and consideration of the proposed Amendment.

As the Amendment recognizes, unconventional, shale gas development is an industrial use of the land. Once Council acknowledges that shale gas operations are industrial in character, in my opinion, it must be placed in the industrial district. This is also true for a steel mill, a smelting plant or a cement factory and therefore these uses also simply cannot be accommodated in other zoning districts. As the United States and Pennsylvania Supreme Courts have interpreted both the United States and Pennsylvania Constitutions for decades, a zoning scheme is *only* constitutional if it creates zones where only compatible uses are allowed.

While the Township has looked for other locations to potential re-zone industrial districts, the Township could not find suitable areas nor landowners willing to accommodate re-zoning. While some land used for agricultural purposes in the Township, while zoned residential, may have the space to accommodate drilling, drilling is not compatible with residential zoning or agricultural uses as recognized by the fact that the Township designates uses and treats the residential district separate from the industrial zone.

In the recent case of Tinicum Twp. v. Nowicki, 99 A.3d 586, (Pa. Commw. Ct 2014), the Pennsylvania Commonwealth Court defined Agricultural operations. In doing so, the court looked to various provisions in the MPC including the definition of "Agricultural Operations" as found in 53 P.S. § 10107 to explain what properly constitutes Agricultural operations in an Agricultural Zoning District. The court held that "in order to qualify as either an Agricultural operation or a forestry activity as defined by Section 107 of the Municipalities Planning Code and protected by Section 603(f) and 603(h), the use in question must have some connection to or utilization of the land itself for production of trees, livestock, or agricultural, agronomic, horticultural, silvicultural, or aquacultural crops or commodities. In denying a "mulching operation" in the Agricultural Zoning District, as it was not related to farming, the Court held "[t]his interpretation is supported by the legislative policy behind the "Right to Farm Act" "it is the declared policy of the Commonwealth to conserve and protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products". 3 P.S. § 951; Tinicum, at 593. This holding clearly dictates against allowance of industrial uses in the Agricultural zoning district as they are fundamentally inconsistent with "agricultural" activities.

In the Pennsylvania Commonwealth Court's majority and binding opinion in Robinson Township, President Judge Pellegrini found that by providing for oil and gas operations in all zoning districts, "Act 13" "violates substantive due process because it allows **incompatible uses in zoning districts** and does not protect the interests of neighboring property owners from harm, alters the character of the neighborhood, and makes irrational classifications. Robinson

Township v. Commonwealth, 53 A.3d 463, 485 (Pa. Commw. Ct. 2012). Chief Justice Castille, agreed, writing that “zoning laws protect landowners’ enjoyment of their property by categorizing uses, **designating compatible uses to the same district**, and **generally excluding incompatible uses from districts**, with limited exceptions that do not affect the comprehensive land use scheme of the community.” Robinson Township, 83 A.3d at 931.

This concept was further expanded when the Commonwealth Court noted that Act 13’s allowance of oil and gas operations in zoning districts that are not compatible with the district “[does] not serve the police power purpose of the local zoning ordinances, relating to **consistent and compatible** uses in the enumerated zoning districts.” Id. If Council were to provide industrial natural gas operations outside of an industrial district it would be what President Judge Pellegrini aptly described that “what we have under Act 13 is a “spot use” where oil and gas uses are singled out for different treatment that is **incompatible** with other surrounding permitted uses.” Robinson Township, 52 A.3d 463 at fn. 23.

In light of these constitutional restrictions on governmental power, in any zoning activity, Council is obligated to investigate, demonstrate and support how and why a particular land use is appropriate in a given zoning district, based on compatibility with the purpose of the zoning district, other land uses and unique local concerns, such as topography, density, availability of municipal services and road access.

“To achieve recognition of the environmental rights enumerated in the first clause of Section 27 as “inviolable” necessarily implies that economic development cannot take place at the expense of an unreasonable degradation of the environment.” 83 A.3d at 954. “The corollary of the people’s Section 27 reservation of right to an environment of quality is an obligation on the government’s behalf to refrain from unduly infringing or violating the right, including by legislative enactment or executive action.” Robinson Township. In other words, the obligation to protect citizens’ rights to clean air and pure water has a corollary responsibility to ensure that those rights are in fact protected. Clause 1 of Section 27 requires each branch of government to “consider in advance of proceedings the environmental effect of any proposed action on the constitutionally protected features”. Robinson Township. Council cannot “consider in advance” the impacts of proposed oil and gas uses if land use applicants are not required to present such information and meet certain defined conditions. Peters ordinance is designed to ferret out the information in order for Council to make an informed decision on any applicant’s proposed oil and gas use and its potential impact on the protected rights of Peters Township citizens.

It would be very unlikely for Council to allow cement factories, steel mills or smelting plants in zoning districts other than the industrial district zoning district. Given that the Amendment recognizes oil and gas development as an industrial use of land, the same rationale for denying other industrial uses access to the proposed district is applicable here. There is no reason to treat oil and gas development operations differently from any other land uses. While separating uses and only allowing compatible uses in varied zoning districts is not only sound policy, what many forget is that it is why zoning, a limitation on property use, is constitutional. Local governments have and must fully comply with constitutional constraints and must

understand the environmental affects their actions may have on their citizens when passing legislation.

Arguments are typically advanced from some local citizens that there is a desire to strike a balance to allow residents to profit from the production of natural gas. This is no doubt a laudable goal and the purpose of this letter and ordinance is not designed to prohibit oil and gas development in Peters Township. However, many municipal Boards mistakenly see oil and gas activity as having some exemption from the constitutional constraints that prohibit the allowance of a steel mill in an agricultural zoning district or a shopping mall in a low-density residential district. The United States and Pennsylvania Constitutions equally apply to all land uses. The rationale that oil and gas development is somehow exempted from this constitutional analysis (because it is a growing industry) brought about "Act 13." "Act 13" was struck down because application of the Constitution to the Pennsylvania General Assembly's attempt to escape or re-characterize industrial uses and allow them to take place in zoning districts not designed to withstand the uses and that were incompatible with existing uses, denied citizens substantive "Due Process" of rights, expectations and protections their zoning districts, where they have made investments in homes and families, once provided.

While certainly important, these economic concerns cannot upset the constitutional rights of the citizens of Peters Township. "If economic and energy benefits were the only considerations at issue, this particular argument would carry more weight. But the Constitution constrains this Court not be swayed by counter-policy arguments where the Constitutional command is clear." Robinson Township, 83 A.2d at 981. Moreover, as the Chief Justice of the Pennsylvania Supreme Court explained, "no principle of law permits us to suspend Constitutional requirements for economic reasons no matter how compelling those reasons may seem." Id at 977. "The fundamental rights guaranteed by the Pennsylvania Declaration of Rights cannot lawfully be infringed, even momentarily." *Pap's A.M. v. City of Erie*, 812 A.2d 591, 607 (Pa. 2002). "Despite the changing conditions to which zoning ordinances and statutes are aimed, any law found clearly not to conform to the Constitution, of course must fall." Id. at 1002. If another industry were to propose a large-scale industrial development in Peters Township, Council wouldn't merely allow it in the existing residentially based zoning district. Council would require at a minimum that the land be re-zoned land, through the process set forth in the MPC, to provide for such use. Oil and gas development is no different.

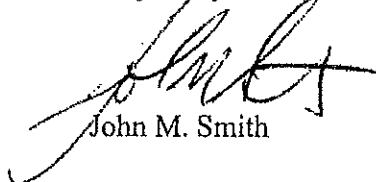
The difficult position of this Council is certainly recognized, as there are a variety of important interests to consider. Leaseholders are likely interested in the economic gain that may result from oil and gas development, ranging from lease signing bonuses to royalty payments to surface usage agreements. Some of these leaseholders may have signed leases prohibiting development on their land. Oil and gas operators are interested in producing subsurface minerals and transporting them to market. Community officials are interested in the economic benefit of jobs for residents, increased taxes from residents' income and even increased "impact fees" for development within municipal boundaries, while at the same time are cognizant of potential reduction in property values due to certain land uses. Other groups of citizens invested substantial resources in the establishment of businesses and residences in areas of Peters Township in reliance on its zoning. While there are many competing interests, the Constitution

charts the appropriate path for Council to move forward. While the application of zoning rules and regulations to oil and gas matters may seem new, this attempt to zone requires no more than to follow the basic tenets of zoning which Pennsylvania municipalities have employed for years, compatible uses in like zoning districts and ensuring that any and all legislation serves to protect the health, safety and welfare of Peters Township citizens. Random industrialization by oil and gas development which ignores defined zoning district will affect many residential growth areas and, while it may offer a short-term benefit of potential royalty payments to landowners, it has a substantial long-term detriment of making large areas of Peters Township potentially unappealing to development in the future, jeopardizing the property tax base for the Township and School District.

The ordinance attempts to comply with the current law in Pennsylvania, but I recognize that the case law in this area is in its infancy and will fully develop over time. What constitutes pre-empted technical aspects versus authorized zoning features that may develop with proper zoning regulations will play out and our ordinance contains features that the courts have not weighed in on as to their propriety. In defining the nature of our challenge in the Robinson case, Justice Castille aptly surmised the Constitutional restrictions on local governments. He found "According to the Citizens, this dispute is not about municipal power, statutory or otherwise, to develop local policy, but it is instead about compliance with constitutional duties. Unless the Declaration of Rights is to have no meaning, the Citizens are correct." Robinson

Lastly, as Council is aware, my opinion is based on current Pennsylvania Law as I interpret it. The case of Gorsline v. Fairfield Township has been briefed and it is awaiting argument before the Pennsylvania Supreme Court. That decision undoubtedly will provide additional guidance to all Pennsylvania municipalities that merely seek to follow the law and protect the rights of its citizens. Please call or e-mail with any questions.

Very Truly Yours,



John M. Smith

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