

Pipelines, Communities and Safety Land Use Issues and Act 13

Vincent M. Pompo

March 20, 2014

LAMB | McERLANE^{PC}

ATTORNEYS AT LAW



Legend

— MP 272 to Marcus Hook Alternate Route

Sunoco Logistics Pennsylvania Pipeline Project

East Bradford Township, PA



Legal Framework

- Federal
- State
- Preemption

Federal

- Natural Gas Act
- Interstate Commerce Act
- Federal Energy Regulatory Commission (FERC)

Federal Preemption

- Supremacy of Federal law involving Natural Gas Transmission and Storage Facilities
- Interstate Commerce
- Total Preemption vs. Conflict Preemption

Role of FERC

- NGA confers upon FERC “exclusive jurisdiction” over the transportation and sale of natural gas in interstate commerce for resale
- Nevertheless, as a matter of policy, FERC has imposed upon applicants a requirement to cooperate with State and local agencies through conditions placed on certificates of public convenience and necessity

Typical FERC Ordering Paragraph

- Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of [the authorization] and [certificate]. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

Meaning?

- Certificate Holders Must Apply for Permits
- If a Conflict arises between the requirements of a State or local agency, and the Certificate's conditions, Preemption will apply
- FERC subscribes to a "Rule of Reason"
- To the extent a State or local agency "unreasonably delays" issuance of an approval, the applicant could proceed without such approval

Municipal Strategy

- Clear and defensible ordinances pertaining to local issues specific to pipelines and related surface facilities
- Legal authority under the Municipalities Planning Code and Preemption

State Preemption

- Déjà vu - The phenomenon of having the strong sensation that an event or experience currently being experienced has been experienced in the past, whether it has actually happened or not.
 - From Wikipedia

Unconventional Gas Well Impact Fee Act (Act 13)

- Chapter 13 – Fee provisions
- Chapter 32 – Well permitting program
- Chapter 33 – Local regulations

Relevant Provisions of Chapter 33

- Section 3303 – Preemption of all local ordinances
- Section 3304 – Uniformity among local ordinances Commonwealth-wide
- Section 3306 – Commonwealth Court original jurisdiction to invalidate local ordinances

Robinson Township v. Commonwealth

- Prompt challenge to Act 13 filed in Commonwealth Court
- Court finds certain provisions unconstitutional as a violation of due process
- Appeal to Supreme Court

Robinson Township v. Commonwealth, filed December 19, 2013

- PA Supreme Court strikes down portions of Act 13 as unconstitutional
- Application for Reargument denied February 21, 2014
- Remand to Commonwealth Court

Environmental Rights Amendment

- “The people have a right to clean air, pure water, and the preservation of the natural, scenic, historic and aesthetic 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.”

Provisions of Act 13 Struck Down

- Section 3303 – no exclusion of all local ordinances
- Section 3304 – no mandated uniform statewide ordinances
- Sections 3215(b)(4) & (d) – no DEP well setback waivers

Provisions of Act 13 Not Struck Down

- Section 3302 – Preemption

“Except with respect to local ordinances adopted pursuant to the [MPC] and . . . the Flood Plain Management Act, all local ordinances purporting to regulate oil and gas operations . . . are hereby superseded. No local ordinances adopted pursuant to the MPC or the Flood Plain Management Act shall contain provisions with impose conditions, requirements or limitations on the same features of oil and gas operations regulated by [this Chapter].”

- Section 3306(1) – Gives Commonwealth Court original jurisdiction to invalidate ordinances
“...any person who is aggrieved by the enactment or enforcement of a local ordinance that violates the MPC, this Chapter or Chapter 72, may bring an action in Commonwealth Court to invalidate the ordinance or enjoin its enforcement.”

Preemption

- *Huntley & Huntley, Inc. v. Borough Council of Borough of Oakmont*, Pa. Supreme Court, 2009
 - “how vs. where”
 - retention of local power to designate suitable districts for uses

- *Range Resources – Appalachia, LLC, Penneco Oil Company v. Salem Township*, Pa. Supreme Court, 2009
 - “how vs. where” distinction fatal to a general ordinance

- *Penneco Oil Co. v. County of Fayette, Pa.*
Commonwealth Court, 2010
 - Upholds zoning ordinance permitting oil and gas wells by special exception

Standards and Criteria Upheld in *Penneco Oil*

- An oil and gas well shall not be located within the flight path of a runway facility of an airport
- An oil and gas well shall not be located closer than 200 feet from residential dwelling or 50 feet from any property line
- An oil or gas well shall provide fencing and shrubbery around the perimeter of the pump head and support frame
- The ZHB may attach additional conditions in order to protect the public's health, safety and welfare, including increased setbacks

- *Appeal of New Century Pipeline from Township of Bradford Zoning Hearing Board, Pa. Commonwealth Court, 2012*
 - Whether a compressor station located at a wellhead is permitted in the Forest/Slope Residential District
 - Yes, since gas production is permitted in the district

Case Study

- Mariner East Pipeline Project, West Goshen Township, Boot Road and Route 202
- Application for special exception before the zoning hearing board for a public utility facility (pump station) and a special exception to increase the height of a structure (enclosed flare) to 34'
- 4.42-acre parcel
- R-3 Zoning District

Mariner East Pipeline Project Sunoco Logistics

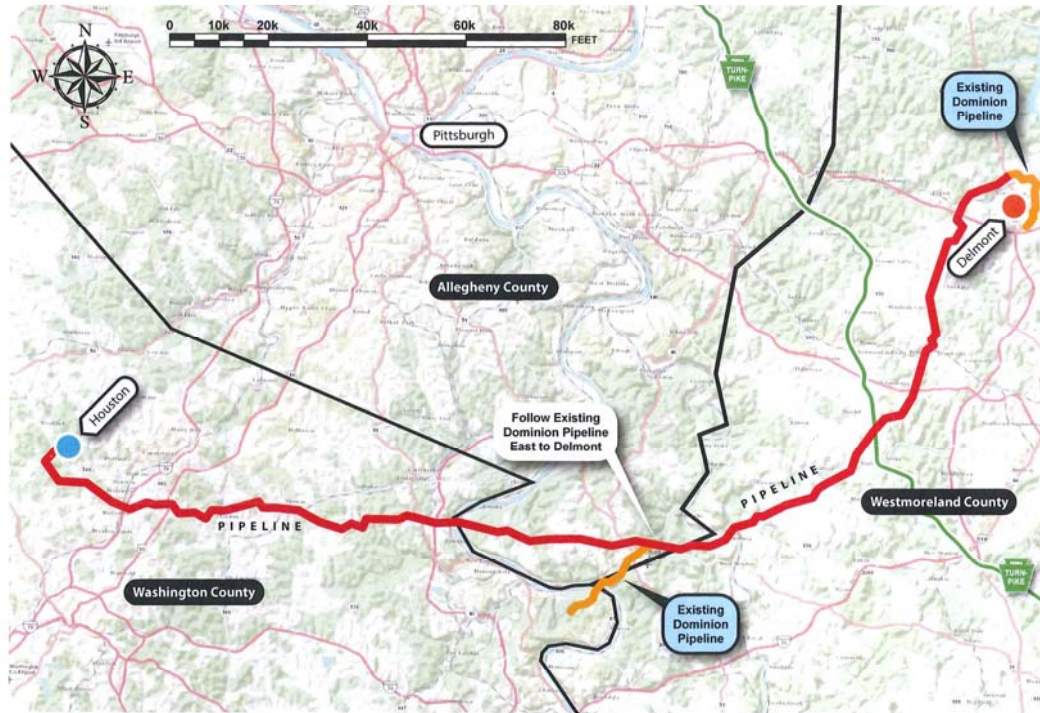
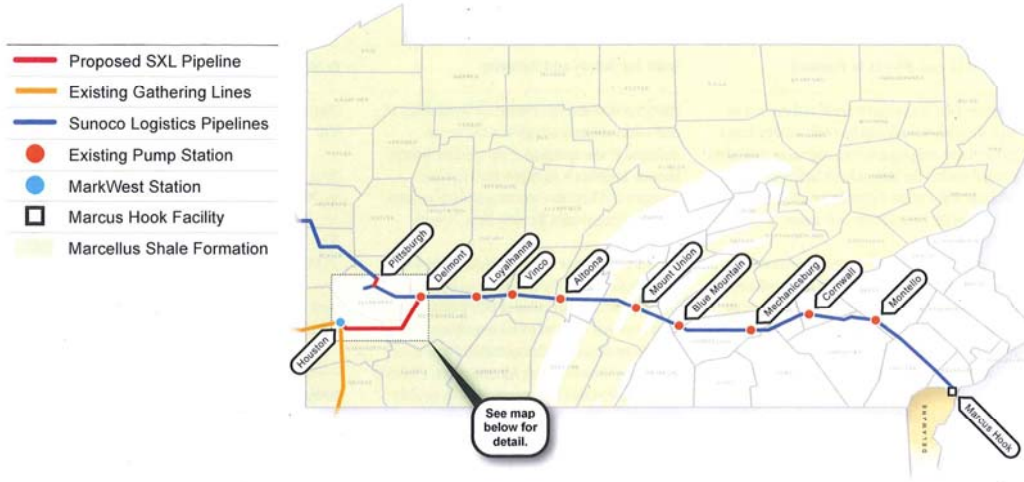
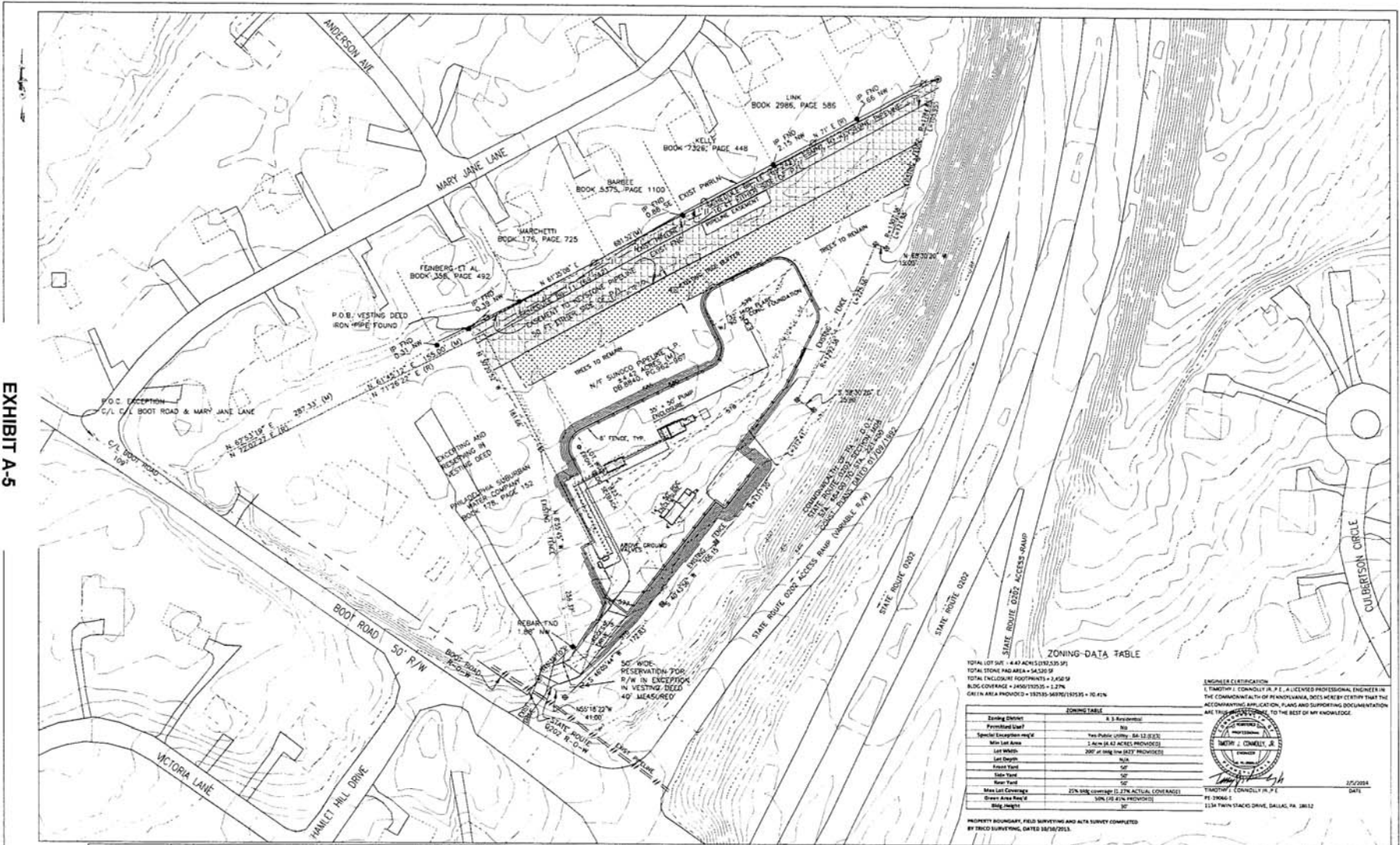


EXHIBIT A-5



ZONING-DATA TABLE

TOTAL LOT SIZE = 4.8 ACRES (209,339 SF)
 TOTAL STONE PAD AREA = 54,530 SF
 TOTAL ENCLOSURE FOOTPRINTS = 2,450 SF
 BASIC COVERAGE = 4.800000% = 2.31%
 CALCULATED AREA PROVIDED = 182155-56376/182155 = 10.41%

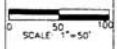
ZONING TABLE	
Zoning District	R-3 Residential
Permitted Uses	Res
Specialty Enclosures (sq ft)	Yes Public Utility: 84.12 (2.31%)
Max Lot Area	1.42M (31.42 ACRES PROVIDED)
Lot Width	200' AT WING (SEE CITY PROVISIONS)
Lot Depth	N/A
Access Yard	50'
Side Yard	50'
Front Yard	50'
Max Lot Coverage	27% (SEE COVERAGE) (2.27% ACTUAL COVERAGE)
Open Area Ratio	30% (SEE CITY PROVISIONS)
Sign Height	30'

ENGINEER CERTIFICATION
 I, THOMAS J. CONNELLY JR., P.E., A LICENSED PROFESSIONAL ENGINEER IN THE COMMONWEALTH OF PENNSYLVANIA, DOCS HEREBY CERTIFY THAT THE ACCOMPANYING APPLICATION, PLANS AND SUPPORTING DOCUMENTATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

THOMAS J. CONNELLY JR.
 P.E.
 1134 TWIN STACKS DRIVE, DALLAS, PA 18122

02/03/14
 DATE

PROPERTY BOUNDARY, FIELD SURVEYING AND DATA SURVEY COMPLETED BY TRICO SURVEYS, DATED 10/10/2013.



1
 OF
 1

TETRA TECH
 www.tetrattech.com
 1134 TWIN STACKS DRIVE
 DALLAS, PA 18122
 T: (570) 674-8648 | F: (570) 674-8651

MARK	DATE	DESCRIPTION	BY

BOOT ROAD PUMP STATION
 WEST GOSHEN TOWNSHIP, CHESTER COUNTY

OVERALL SITE PLAN

DATE: 02/03/14
PROJECT NO: 112005370
CREATED BY: TC
CHECKED BY: TC
SCALE: 1"=50'
FILE: BASEPLAN_G2
NAME: OVERALL
COPYRIGHT: TETRA TECH INC.

EXHIBIT A4



1
OF
1

TETRA TECH
www.tetra-tech.com
1134 TWIN STACKS DRIVE
DALLAS, PA 19612
T: (570) 674-8648 | F: (570) 674-8651

MARK	DATE	DESCRIPTION	BY

BOOT ROAD PUMP STATION
WEST GOSHEN TOWNSHIP, CHESTER COUNTY
OVERALL SITE PLAN WITH AERIAL PHOTO

DATE: 02/03/14
PROJECT NO.: 112005370
DRAWN BY: TC
CHECKED BY: TC
SCALE: 1"=50'
FILE: BASEPLAN 02
NAME: OVERALL 1
©PHYSIK TETRA TECH INC.

L A M B | M c E R L A N E ^{PC}

ATTORNEYS AT LAW

Vincent M. Pompo

vpompo@lambmcerlane.com

610-701-4411