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September 2, 2016

VIA EMAIL

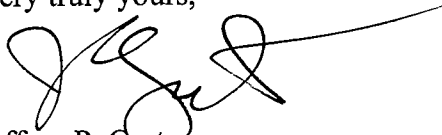
Kurt Ferguson, Township Manager
Newtown Township
100 Municipal Drive
Newtown, PA 18940

Re: Jointure/Oil and Gas Ordinance

Dear Mr. Ferguson:

Attached please find a draft of the latest version of the Oil and Gas Ordinance that is being considered by the Jointure. I would appreciate if you would circulate it to the Board of Supervisors and solicit any comments they may have.

Very truly yours,



Jeffrey P. Garton

JPG/njf

Attachment

cc: Chester Pogonowski, Chairman
Mary Donaldson, Recording Secretary

JMZO No. 2016 -- _____

_____ Municipality Ordinance No. _____

AN ORDINANCE OF NEWTOWN TOWNSHIP, UPPER MAKEFIELD TOWNSHIP, AND WRIGHTSTOWN TOWNSHIP AMENDING THE NEWTOWN AREA JOINT MUNICIPAL ZONING ORDINANCE OF 1983, AS AMENDED, TO ADD A NEW USE, G-17 GAS AND OIL DRILLING, PROCESSING, AND TRANSPORT.

BACKGROUND:

A. Pursuant to statutory authority, the Pennsylvania Municipalities Planning Code (the "MPC"), Act 247 of 1968, as amended (53 P.S. §10101 *et seq.*), the Townships of Newtown, Upper Makefield, and Wrightstown have enacted the Newtown Area Joint Municipal Zoning Ordinance of 1983, (the "JMZO"), as amended;

B. With the onslaught of gas and drilling, and the associated activities, due to technological advances, the Townships believe it is in their best interest to enact a regulatory scheme for these activities prior to their entry into this area of the Commonwealth; and

C. The proposed Amendment has been advertised, considered, posted and reviewed in accordance with MPC Section 609 (53 P.S. §10609).

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, and it is hereby **ENACTED AND ORDAINED** by the Boards of Supervisors of Newtown Township, Upper Makefield Township, and Wrightstown Township, Bucks County, Pennsylvania, as follows:

ARTICLE I – Use G-17 Gas and Oil Drilling, Processing, and Transport.

A new Use, G-17 Gas and Oil Drilling, Processing, and Transport shall be added to Section 803 of the JMZO that shall read as follows:

G-17 Gas and Oil Drilling, Processing, and Transport. These are activities limited to the extraction, recovery and removal of subsurface gas and oil deposits through direct on-site drilling as defined and set forth in the Pennsylvania Oil and Gas Act ("Act" - 58 Pa.C.S.A. §3201 *et seq.*) and the regulations enacted thereto. This Use does not include the recovery and removal of any other subsurface minerals, such as coal, gravel, sand, clay, topsoil, stone or any other mineral

other than oil and gas, such activities being covered by Use G-14, Quarry. This Use G-17 is permitted subject to all of the following requirements:

1. *Statement of Purpose.* The purpose of these Use regulations is to provide for the health, safety, welfare and environment of the residents and their property in the Joint Municipal Zoning Region; to provide the procedure for the issuance of zoning permits to enable oil and gas deposits to be extracted through direct, on-site wells and subsequently processed and transported; and to permit wells to be drilled and placed in production in a safe manner with the utmost regard for protection of existing water supply wells, sewage disposal facilities, structures, natural resources, farmland, and other environmental features within the Region.

2. Subject to the following provisions, this Use shall be permitted as a principal use, by conditional use approval, only upon land located within the following zoning districts: RI Rural Industrial District, and QA Quarry/Agriculture District. This Use is prohibited on any property subject to a conservation easement, open space restrictions, or any similar constraints and limitations, whether public or private.

3. This Use shall not occur, no conditional use approval shall be granted, and no building or zoning permit shall be issued, until the following applicable procedures and standards have been met; other applicable provisions of the JMZO have been satisfied; and all applicable Township, County, State, and Federal statutes, laws, codes, ordinances, rules, regulations, and other requirements have been complied with, as evidenced by the prior written approval of the agency having jurisdiction thereover, including, without limitation, the operator's license of the entity operating the facility and copies of all state and federal permits.

4. An applicant seeking to establish this Use upon a parcel shall submit an application, a site plan, and all documentation necessary to satisfy the requirements of this Use. Where required, all impact statements/reports shall be provided in conformance with the participating municipality's subdivision and land development ordinance, as well as, all other applicable information required by the JMZO. Upon approval of the application, all subsequent operations shall be in conformance with the site plan, the conditional use decision, all municipal permits, all state and federal permits, and all standards contained in this Use's provisions.

5. The conditional use approval for any well shall become void if drilling has not been initiated within one (1) year after issuance of the written conditional use decision. A single extension, for up to one (1) year, may be granted by the governing body upon written request by the applicant, submitted prior to the expiration of the original one-year period, subject to the finding that the plan is in compliance with all standards.

6. *Standards.*

a. *General.*

(1) Offensive or noxious odors, fluids, gases, dust or glare shall be confined to the subject parcel or the leasehold premises upon which the Use is established and shall not substantially or significantly impact any occupied structures or dwellings.

(2) Junk, refuse, trash, or abandoned material shall not be disposed of on-site. All refuse stored on site for final off-site disposal shall be indoors, in a dumpster, or within another permitted enclosure. On-site disposal of such refuse is prohibited.

(3) Any hazardous or toxic material shall be securely contained, stored, and removed in accordance with applicable state or federal regulations. On-site disposal is prohibited.

(4) All operations shall be in accordance with all applicable federal laws and regulations; the Act, as amended; and pursuant to all rules, regulations and procedures adopted thereto.

(5) All drilling and production operations, including derricks, retaining pits, vacuum pumps, storage tanks, vehicle parking, structures, machinery and ancillary equipment shall be located at least 600 feet from any building containing a residential dwelling; from any structure used for public assembly, including schools and churches; and from any nonresidential structure, where the owners of such structures are not the applicant, lessors to the applicant, nor a party to the oil and gas instrument.

(6) All aspects of the extraction and recovery of subsurface gas and oil deposits, including without limitation all drilling, production operations, buildings, pumps, condensers, processing equipment, pipelines, etc., shall be located at least 100 feet from the ultimate right-of-way of any public or private street, and 100 feet from any property line. Pipelines shall be permitted to traverse the required setback only where absolutely necessary to transport extracted product off-site.

(7) The owners(s) and operator(s) shall be responsible for prevention and prompt removal of spills involving waste materials, oil, and toxic or hazardous materials.

(8) Minimum lot size shall be 15 acres.

(9) *Well Pads.* Multiple well pad sites on any one property shall be prohibited, unless the underlying geology makes using a single well pad impossible.

(10) *Expansion of Surface Use Area.* Any expansion of the ground surface area used and/or devoted towards drilling operations requires further conditional use approval pursuant to the terms and requirements of this Use.

(11) No recovery of subsurface gas and oil deposits use shall be conducted within 1,000 feet of any properties known to be a landfill or to be designated as a site containing hazardous substances under state or federal environmental cleanup laws.

b. *Visual.*

(1) The drilling site, production site, access roads/driveways, and all structures shall be located, designed, and constructed to minimize the removal of trees and shrubs, protect all natural resources, and minimize the amount of surface disturbance. All of the natural resource protection provisions of the JMZO shall be met.

(2) Excavation, structures, and/or equipment in sensitive areas such as ridges, hilltops, scenic areas, or other areas of special visual quality shall be prohibited, unless such placement is unavoidable.

(3) The location and design of structures and site improvements shall be integrated with the natural color, form, and texture of the surrounding area.

(4) All structures, equipment, and operations shall be fully screened from off-site view. Methods may include, but are not limited to: (a) existing and/or replanted vegetation and (b) existing and/or artificially created land forms.

(5) Glare from site lighting or gas flaring shall not impact on nearby residences and occupied structures, excepting those whose owners are the applicant, lessors to the applicant, or a party to the oil/gas instrument.

(6) *Viewshed Mitigation.* All viewsheds to the property shall be identified. Where viewsheds are determined by the municipality to be scenic and such viewsheds will be adversely impacted by the use, viewshed mitigation measures, including without limitation perimeter or other appropriate location buffers and other plantings per the standards in the participating municipality's subdivision and land development ordinance, as amended, shall be installed along all property lines and the perimeter of the extraction area.

c. *Air and Water Quality; Noise.* Operators shall conform to all following requirements in connection with air and water quality and noise:

(1) Air contaminant emissions shall be in compliance with all county, state and federal regulations, including without limitation the control provisions of the Clean Air Act, as amended; and all fugitive dust regulations for smoke, ash, dust, fumes, gases, odors, and vapors.

(2) Water contaminant emissions shall be in compliance with all county, state and federal regulations, including without limitation the Clean Water Act, as amended.

(3) *Noise.* The operator shall take all possible precautions and measures to minimize the level and duration of noise created by the drilling operation, including without limitation maximum muffling of generators, construction of earthen berms, etc. All equipment used in drilling, completion, or production of a well must comply with the noise limits of this Use.

The noise (sound) pressure levels at any point beyond the property boundary containing the well shall be no more than 55 decibels (dB) during the day (7 a.m. to 7 p.m.); and no more than 45 decibels (dB) during the night (7 p.m. to 7 a.m.), and on Sundays and federal holidays. These noise standards shall also apply to any gas compressors and to all equipment used for well drilling and operations and gas processing and transport.

d. *Wildlife and Cultural Resources.*

(1) No habitat disturbance is to occur where threatened or endangered species or critical habitats exist, as defined by the Pennsylvania Department of Conservation and Natural Resources. A Pennsylvania Natural Heritage Program study shall be completed and provided to the municipality as a part of the conditional use application.

(2) All activity in an archaeological or historic resource area, as identified in the JMZO, the participating municipality's comprehensive plan, the Bucks County Comprehensive Plan, or by the Pennsylvania Department of Conservation and Natural Resources (DCNR) or the Pennsylvania Historical and Museum Commission (PHMC), shall provide for the preservation of the resource or provide for the completion of necessary study and work as specified by DCNR and/or PHMC before any aspect of the Use begins. Should an archaeological or historic resource be uncovered during operations, those operations shall be suspended pending recommendation of DCNR and/or PHMC, as applicable.

e. *Hazards.*

(1) For areas of potential wildfire hazard, fireline intensities shall be abated to less than 100 BTU/foot/second through fuelbreaks or other equally effective means around structures or areas of activity. Required practices for grass/shrub lands include the following: (a) fuelbreaks of a width three to four times the height of adjacent vegetation, and (b) re-vegetation with short grasses.

(2) Activities or structures proposed within a floodplain shall independently meet the floodplain provisions of the JMZO; and shall be carried out in a manner that does not increase flood hazards upstream or downstream, nor reduces the efficiency with which flood waters are carried through the site.

(3) The applicant shall maintain at the property and on file with the municipality, a current list of and all the Material Safety Data Sheets (MSDS) for, all chemicals used in the drilling operations (including but not limited to types of additives, polymers, salts, surfactants and solvents) and in any hydraulic fracturing operations.

(4) *Emergency Preparedness and Public Safety Plan.* As part of the conditional use application and zoning permit, the applicant shall provide an emergency preparedness and public safety plan. The plan shall demonstrate the following:

(a) Name, address and phone number, including 24-hour emergency number of at least two persons responsible for drilling operations and any other activities upon the property.

(b) As-built facilities plan.

(c) First responders plan for potential emergencies including, but not limited to, explosions, fires, geological activity, flooding, or pipe rupture.

(d) Specific emergency preparedness plan for all potential hazardous scenarios.

f. *Access.*

(1) Ingress and egress points shall be located and improved in order to: (a) ensure adequate capacity for existing and projected traffic volumes; (b) provide efficient movement of traffic; and (c) minimize hazards to highway users and adjacent property and human activity.

(2) All applicable permits or approvals must be obtained, including without limitation: (a) access or driveway permits to state or township roads; (b) construction within state or township highways; and (c) overweight or oversize loads.

(3) Use of streets exclusively serving residential neighborhoods to access the site is prohibited.

(4) All weather access roads, suitable to handle emergency equipment, shall be provided to within 50 feet of any structure, improvement, or activity area.

(5) The operator shall be responsible to keep all public and private rights-of-way which are used to enter or exit the well site substantially free from mud, dirt, and other debris. If any substantial amount of mud, dirt, or other debris is carried on to public or private rights-of-way from the well site, the operator shall clean the roads at regular intervals.

g. *Drainage and Infiltration.*

(1) All watercourses and wetlands shall be preserved in a natural undisturbed state and the riparian buffer requirements of the JMZO shall be complied with. The well pad, as well as the gas and oil well casing and tank structures normally used in drilling and recovery operations, shall be a minimum of 100 feet from the edge of any watercourse or wetland. A wetlands report, validated by the U.S. Army Corps of Engineers, shall be provided.

(2) Roads or other improvements obstructing drainages shall provide for culverts or other stormwater management facilities sized for storm flows as determined by the participating municipality's engineer.

h. *Additional Safety Regulations.* Prior to the commencement of and during all operations, all operation and/or drilling sites shall be completely enclosed by a chain link fence, masonry wall, or other fencing material according to one of the following requirements:

(1) *Fences.* All fences used to enclose in whole or in part any well site or operation site shall be constructed in accordance with standard engineering practices and shall meet the following minimum specifications:

(a) The fence shall be at least eight (8) feet in height.

(b) Support posts shall be set in concrete and shall be imbedded into the ground to a depth sufficient to maintain the stability of the fence.

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(2) *Masonry Wall Specifications.* All masonry walls used to enclose in whole or in part any well site or operation site shall be constructed in accordance with standard engineering practices and shall meet the following minimum specifications:

(a) The wall shall be of a design compatible with the facilities buildings and structures on and adjacent to the site.

(b) The wall shall be at least eight (8) feet in height.

(c) The wall shall be constructed in accordance with the provisions of the participating municipality Building Code, as amended.

(3) *Gate Specifications.* For all operations and drill sites, all chain link fences and masonry walls shall be equipped with at least one gated area. The gated areas shall meet the following specifications:

(a) Each gated area shall be not less than 12 feet wide and be composed of two gates, each of which is not less than six (6) feet wide, or one sliding gate not less than 12 feet wide. If two gates are used, gates shall latch and lock in the center of the span.

(b) The gates shall be at least eight (8) feet in height.

(c) The gates shall be of chain link construction which meets the applicable specifications for such fencing set forth above or of other approved material which, for safety reasons, shall be at least as secure as chain link fence.

(d) They shall be provided with a combination catch and locking attachment device for a padlock and shall be kept locked except when being used for access to the site.

(4) *Storage of Equipment.*

(a) No drilling, re-drilling, reworking, or other portable equipment shall be stored on the operation site which is not

essential to the everyday operation of the well located thereon. This includes the storage of idle equipment unnecessary for the operation of such wells.

(b) Lumber, pipes, tubing, and casing shall not be left on the operation site except when drilling or well servicing operations are being conducted on the site and such materials are necessary for these operations.

(c) It shall be illegal for any person, owner or operator to park or store any vehicle or item of machinery on any street, right-of-way, or in any driveway or alley. It shall be illegal for any person, owner or operator to park or store any vehicle or item of machinery upon any operation or drilling site in a location which constitutes a fire hazard or an obstruction to or interference with fighting or controlling fires except that equipment which is necessary for the maintenance of the well site or for gathering or transportation of hydrocarbon substances from the site.

i. *Screening; Landscaping.*

(1) *Screening Developed Areas.* All wells, tanks, and, other drilling related equipment shall be screened by an enclosure constructed of one of the following materials:

(a) A solid masonry wall.

(b) A chain link fence with three and one-half-inch mesh interwoven with opaque slats.

(c) Any other material, compatible with surrounding uses, which effectively screens the operation and drilling site and is approved by the governing body.

(d) All fencing, masonry walls, opaque slatting, or other compatible materials for use with chain link fencing, shall be of a solid neutral color, compatible with surrounding uses, and maintained in a neat, orderly, and secure condition. Neutral colors shall include sand, gray, and unobtrusive shades of green, blue and brown, or other colors approved by the governing body.

(2) *Screening Drilling, Redrilling, Reworking, Converting, and Activation.* Within 60 days of completion of drilling, redrilling, reworking, or converting, or within 60 days of activation of any idle well as defined in the JMZO, such well shall be screened by a fence enclosure

which conforms to the requirements of this Use, and all applicable state regulations.

(3) *Landscaping.* Within 60 days after completion of drilling or redrilling or within 60 days after activation of any idle well, any oil operation site shall be landscaped in accordance with a plan submitted to and approved by the governing body.

7. To the extent any provision of this Use conflicts with any other applicable provision of the JMZO, the more restrictive provision shall apply.

8.

ARTICLE II – Repealer All inconsistent provisions of other ordinances or resolutions are repealed to the extent of the inconsistency. All other provisions of the ordinances of Newtown Township, Upper Makefield Township, and Wrightstown Township shall remain in full force and effect.

ARTICLE III – Severability The provisions of this ordinance are declared to be severable. If any provision of this ordinance is declared to be invalid or unconstitutional by a court of competent jurisdiction, such determination shall have no effect on the remaining provisions of this ordinance.

ARTICLE IV – Effective Date This ordinance shall be effective five (5) days after adoption by the last adopting municipality hereto.

ORDAINED and ENACTED this _____ day of _____, A.D., 2016.

ATTEST:

NEWTOWN TOWNSHIP

KURT FERGUSON,
TOWNSHIP MANAGER

KYLE DAVIS,
CHAIR

DATE: _____

ATTEST:

UPPERMAKEFIELD TOWNSHIP

JIM PASCALEDAN RATTIGAN,
TOWNSHIP MANAGER

CHAIR

DATE: _____

ATTEST:

WRIGHTSTOWN TOWNSHIP

JOSEPH PANTANO,
TOWNSHIP MANAGER

CHESTER S. POGONOWSKI,
CHAIR

DATE: _____