

ORDINANCE NO. 129

AN ORDINANCE OF THE TOWNSHIP OF NOCKAMIXON, BUCKS COUNTY, PENNSYLVANIA AMENDING CHAPTER 234 OF THE CODE OF ORDINANCES OF NOCKAMIXON TOWNSHIP PERTAINING TO ZONING IN NOCKAMIXON TOWNSHIP TO REVISE THE REGULATIONS PERTAINING TO THE USE OF LAND FOR DIRECT RECOVERY/EXTRACTION OF SUBSURFACE OIL AND GAS; TO DELETE ALL REFERENCES TO CHAPTER 146 OF THE CODE OF ORDINANCES OF NOCKAMIXON TOWNSHIP IN THE OIL AND GAS RECOVERY USE REGULATIONS; TO REPEAL MOST OF CHAPTER 146 OF THE CODE OF ORDINANCES OF NOCKAMIXON TOWNSHIP RELATING OIL, GAS AND HYDROCARBONS BUT RETAIN AND REENACT CHAPTER 146'S PROVISIONS RELATING TO GEOPHYSICAL EXPLORATION, SAFETY REGULATIONS AND SCREENING AND LANDSCAPING; TO PERMIT USE G-18 IN ONLY THE I, INDUSTRIAL, AND Q, QUARRY, ZONING DISTRICTS; TO CLARIFY THAT REQUIRED INSURANCE POLICIES MAY NOT CONTAIN ANY RELEVANT EXCLUSION; TO REQUIRE INSURANCE POLICIES TO BE UNDERWRITTEN BY CARRIERS CONTAINING A B++ OR BETTER RATING; TO LIMIT THE NUMBER OF WELL PADS ON ANY ONE PROPERTY; TO ESTABLISH SPECIAL SETBACKS FROM LANDFILL PROPERTIES; TO SET HOURS OF OPERATION LIMITATIONS; TO ESTABLISH VIEWSHED MITIGATION MEASURES; TO REVISE THE AIR CONTAMINANT EMISSION REGULATIONS; TO ESTABLISH NOISE CONTROLS AND MAXIMUM DECIBEL LEVELS; TO REQUIRE CHEMICAL DATA SHEETS AND EMERGENCY PREPAREDNESS PLANS ON SITE; TO REQUIRE ROAD CLEARING AND CLEANING; TO REQUIRE FINANCIAL SECURITY TO ENSURE ORDINANCE AND CONDITIONAL USE PERMIT COMPLIANCE; AND TO EMPOWER THE NOCKAMIXON TOWNSHIP ZONING OFFICER WITH THE ABILITY TO ENTER A PROPERTY OR OBTAIN AN ADMINISTRATIVE WARRANT

BACKGROUND:

A. By Ordinance No. 56, as amended, Nockamixon Township Board of Supervisors ("Board") has enacted a zoning ordinance ("Zoning Ordinance") pursuant to its statutory authority, the Pennsylvania Municipalities Planning Code ("MPC"), Act 247 of 1968, as amended (53 P.S. §10101 et seq.).

B. The Zoning Ordinance, as amended, is codified at Chapter 234 of the Code of Ordinances of Nockamixon Township (the "Code").

C. By Ordinance No. 126, adopted May 18, 2006, the Board enacted regulations pertaining to the use of land for direct recovery/extraction of subsurface oil and gas.

D. The Board, through additional study, recognizes that certain provisions of the Zoning Ordinance, as specifically amended by Ordinance No. 126, should be amended to repeal the majority Chapter 146 of the Code but incorporate some of Chapter 146's provisions relating to geophysical exploration, safety regulations and screening and landscaping in the Zoning

Ordinance; to limit the number of well pads on any single property; to revise the insurance provisions; to require viewshed mitigation; to impose maximum noise decibel levels; to require an emergency management plan to be on-site; to require road clearing and cleaning; to require financial security to ensure compliance with the ordinance and conditional use permit; and to set hours of operation for drilling activities.

E. The Board also determined, through subsequent review, that the zoning districts in which use G-18, Recovery of Subsurface Gas and Oil Deposits, should be revised to permit such use only in the I, Industrial, and Q, Quarry, zoning districts.

F. The Board also determined that Zoning Ordinance §234-95 relating to enforcement powers of the Zoning Officer should be amended to grant the Zoning Officer the right to enter a property or when denied, the ability to obtain an administrative warrant to gain entry.

G. The proposed amendments have been advertised, considered 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 Board of Supervisors of Nockamixon Township, Bucks County, Pennsylvania, as follows:

Section 01: Chapter 146, Oil, Gas and Hyrdocarbons, of the Code of Ordinances is repealed in its entirety.

Section 02: Subsection (2) of Section 234-23.R, G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code is amended in full to read as follows:

“2. Subject to the provisions of this subsection R, this use shall be permitted as a principal use upon conditional use approval in only the I, Industrial, and Q, Quarry, zoning districts. This use is prohibited as a principal use on any property subject to a conversation easement or open space conditions, or any similar restrictions, whether public or private.”

Section 03: Subsection (3) of Section 234-23.R, G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code is amended in full to read as follows:

“3. This use shall not occur, no conditional use approval shall be granted, and no building or zoning permit shall be issued, until the applicable procedures and standards in this subsection R have been satisfied, the applicable provisions of this Zoning Ordinance and the Code of Ordinances of Nockamixon Township have been satisfied, and all applicable requirements of the Commonwealth of Pennsylvania and United States Government have been satisfied, as evidenced by the prior written approval of the agency having jurisdiction, including without limitation the operator’s license and copies of all state and federal permits.”

Section 04: Subsection (1) of Section 234-23.R(6)(a), G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code is amended in full to read as follows:

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

Section 05: Subsection (c) of Section 234-23.R(6)(a)(8), Recovery of Subsurface Gas and Oil Deposits, of the Code, is amended in full to read as follows:

(c) Contain no exclusion from coverage whatsoever, including without limitation from contamination or pollution to surface or subterranean streams, watercourses, lakes, wetlands or public or private water supplies.”

Section 06: A new subsection (d) shall be added to Section 234-23.R(6)(a)(8), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“(d) All required policies shall provide for a minimum of thirty (30) days written notice by carrier to the additional insured by regular mail before cancellation by carrier. Each policy shall clearly set forth the date when the insurance will expire. All carrier(s) shall be licensed to do business in Pennsylvania and shall have a rating not less than a B++ as rated in the most recent edition of *Best's Insurance Reports* and shall be in business for at least the past five (5) years.”

Section 07: New subsections (10), (11), (12) and (13) shall be added to Section 234-23.R(6)(a), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

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

(11) 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 conditions of this subsection R.

(12) 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.

(13) Hours of Operation. Except for emergency activities, hours of operation are limited to Monday through Saturday, 7 a.m. to 7 p.m.”

Section 08: New subsection (6) shall be added to Section 234-23.R(6)(b), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“(6) Viewshed mitigation. All viewsheds to the property shall be identified. Where viewsheds are determined by the Township 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 Nockamixon Township Subdivision and Land Development Ordinance, as amended, shall be installed along all property lines and the extraction area perimeter.”

Section 09: Subsection (c), Air and Water Quality; Noise, of Section 234-23.R(6), Recovery of Subsurface Gas and Oil Deposits, of the Code, is amended in full to read as follows:

“c. Air and Water Quality; Noise. Operators shall conform to all following 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) 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 in this subsection.

- (a) 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.
- (b) Based upon special site characteristics, additional noise measures may be required upon inspection and determination by the Township.
- (c) When taking noise measurements to determine whether additional noise mitigation measures are necessary, sound pressure levels shall be measured under conditions that are representative of the most demanding assumptions related to the specific site. Consideration shall be given to (including but not limited to) the nature and proximity of adjoining properties; time of day; prevailing weather patterns; amount of vegetative cover on or adjacent to the property; and topography of the site.
- (d) If, based upon special site conditions and analysis, additional noise measurements are necessary, one or more of the following additional noise abatement measures, listed below in ascending order of mitigation, shall be required:
 - (i) acoustically insulated housing or covers enclosing any motor or engine;

- (ii) screening the site or noise emitting equipment by fence or landscaping;
- (iii) solid wall or fence of acoustically insulating material surrounding all or part of the facility;
- (iv) a noise management plan specifying the hours of maximum noise and the type, frequency and level of noise emitted; and
- (v) construction of buildings or other enclosures where facilities create noise and such adverse impacts cannot be mitigated because of proximity, density and/or intensity of adjacent land use.”

Section 10: New subsections (6) and (7) shall be added to Section 234-23.R(6)(e), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“(6) The applicant shall maintain at the property and on file with the Township, a current list and 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.

(7) 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 (2) persons responsible for drilling operations;
- (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; and
- (d) Specific emergency preparedness plan for all potential hazardous scenarios.”

Section 11: Subsections (a) and (b) of Section 234-23.R(6)(f)(2), Recovery of Subsurface Gas and Oil Deposits, of the Code, are amended to insert the words “or Township” after the word “County.”

Section 12: A new subsection (5) shall be added to Section 234-23.R(6)(f), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“(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. In 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.”

Section 13: New subsections (6) and (7) shall be added to Section 234-23.R(6)(g), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“(6) **Financial Security.** At the time a building permit or zoning permit, whichever is later, is issued for construction and/or operation of the use, a letter of credit or other financial security, in a form and amount approved by the Board of Supervisors during review of the conditional use, but not to exceed \$50,000.00, shall be deposited with the Township to ensure compliance with the terms of this Zoning Ordinance and removal of all equipment when all drilling operations cease.

(7) The operator of any well site shall notify the servicing fire department, emergency management coordinator, Township zoning officer and Township engineer no less than 90 days prior to the abandonment or shutdown of any well site, to allow the Township to inspect the site and ensure that the well site has been properly secured.”

Section 14: New subsection (i) shall be added to Section 234-23.R(6), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“i. **Geophysical Exploration.**

(1) **Explosives prohibited.** No geophysical work employing underground explosives shall be authorized or permitted within Nockamixon Township boundaries in connection with this use. Other geophysical exploration systems employing thumper, vibroseis, or other techniques not employing explosives, shall be permitted upon a separate application described in subsection (2) below and payment of the applicable fee. Nothing herein shall prohibit the use of shaped charges in the well hole for perforation of casing, as part of the completion of the well.

(2) The application for a permit to conduct geophysical exploration shall include the following:

- (a) date of the application;
- (b) name of proposed permittee;
- (c) address of proposed permittee;
- (d) statement of the proposed commencement and completion date;
- (e) map or plan (three copies) outlining the areas to be covered by the geophysical survey; and
- (f) compliance with all other applicable provisions of this Zoning Ordinance.”

Section 15: New subsection (j) shall be added to Section 234-23.R(6), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

“j. **Additional Safety Regulations.**

(1) Fences. 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:

- (a) The fence fabric shall be at least six (6) 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.
- (c) The chain link fabric shall be galvanized steel wire with a minimum plating of 1.2 ounces of zinc per square foot of surface area or shall be coated with vinyl or plastic material, approved by the Chief of the servicing fire department.
- (d) The chain link fence fabric shall have a minimum thickness of 11 gauge.
- (e) The chain link fabric shall be two-inch mesh; provided, however, three-and-one-half-inch mesh may be used on any fence where the fabric is interwoven with artificial screening material approved by the Chief of the fire department.
- (f) Post and rails shall be standard galvanized, welded pipe. Schedule 40 or thicker; provided, however, that nongalvanized drill pipe may be used if it exceeds Schedule 40 in thickness.
- (g) All pipe and other ferrous parts, except chain link fabric and drill pipe, shall be galvanized inside and outside with a plating which contains a minimum of 1.2 ounces of zinc per square foot of surface area.
- (h) Tension rods shall be three-eighths-inch round steel bolt stock. Adjustable tighteners shall be tumbuckle or equivalent having a six-inch minimum take-up. Tension bars shall have a minimum thickness of $\frac{1}{4}$ by $\frac{3}{4}$ inch.
- (i) All fences shall have security extension arms at the top of such fences and such security extension arms shall be strung with galvanized barbed wire.

(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 six (6) feet in height;
- (c) The wall shall be constructed in accordance with the provisions of the Nockamixon Township 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 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 of chain link construction which meets the applicable specifications or of other approved material which, for safety reasons, shall be at least as secure as chain link fence.
- (c) 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.
- (d) Hinges shall be heavy duty malleable iron or steel industrial service type with a one-hundred-eighty-degree swing.

(4) Storage of Equipment.

- (a) No drilling, redrilling, 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 removal 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.
- (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, alley or upon any operation or drilling site 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."

Section 16: New subsection (k) shall be added to Section 234-23.R(6), Recovery of Subsurface Gas and Oil Deposits, of the Code, and shall read in full as follows:

"k. Screening; Landscaping.

(1) Screening developed areas. All wells, tanks and other drilling related equipment shall be screened by a fence enclosure constructed of one of the following materials:

- (a) A solid masonry wall;
- (b) A chain link fabric with three-and-one-half-inch mesh interwoven with opaque slats;
- (c) Any other material, compatible with surrounding uses, which effectively screen the operation and drilling site and are approved by the Board of Supervisors.
- (d) All fencing, masonry walls, opaque slatting, or other compatible materials for use with chain link fabric, 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 Board of Supervisors.

(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 this chapter, such well shall be screened by a fence enclosure which conforms to the requirements of this subsection R, 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 Board of Supervisors.

Section 17: Subsection 8 of Section 234-23.R, G-18 Recovery of Subsurface Gas and Oil Deposits, of the Code is renumbered as Subsection 7.

Section 18: A new subsection I shall be added to Section 234-95, Enforcement, of the Code, and shall read in full as follows:

“D. Enter upon any property in conducting any investigation or pursuant to any enforcement proceeding; and obtain an administrative warrant to gain entry thereon when denied by the owner and/or occupant of any property.”

Section 19: Sections 234-39.A(2), 234-41.A(2), 234-42.A(2), 234-44.A(2) and 234-46.A(2) of the Zoning Ordinance are amended to delete the reference to use G-18, Recovery of Subsurface Oil and Gas Deposits, as being a permitted principal use upon conditional use approval.

Section 20: The Table of Use Regulations, found as Attachment A to the Zoning Ordinance, is amended to add a line for Use G-18, Recovery of Subsurface Oil and Gas Deposits; and to designate it as being permitted by the letter “C” in only the I, Industrial, and Q, Quarry, zoning districts. All other references to Use G-18 being permitted in any other zoning districts are repealed.

Section 21: In addition, all inconsistent provisions of other ordinances or resolutions are repealed to the extent of the inconsistency. All other provisions of the ordinances of Nockamixon Township shall remain in full force and effect.

Section 22: 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.

Section 23: This ordinance shall be effective five (5) days after adoption by the Nockamixon Township Board of Supervisors.

ORDAINED and ENACTED this 17th day of April, A.D., 2007.

Attest:

Arlene Eichlin
Arlene Eichlin
Township Secretary

**BOARD OF SUPERVISORS
NOCKAMIXON TOWNSHIP**

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James A. Litzenberger, Chair

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