

# **Bond Case Briefs**

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## **Pennsylvania Supreme Court Continues Rulings Against Municipal Zoning Authority.**

On August 3, 2018, the Pennsylvania Supreme Court vacated another municipal zoning decision favorable to oil and gas development. In its per curium order of *Delaware Riverkeeper Network v. Middlesex Township* (N0. 270 WAL 2017), the Supreme Court directed the Commonwealth Court to reconsider its previous decision upholding a local zoning ordinance that permitted oil and gas development in agricultural and some residential areas. This order, accompanied by the Supreme Court's recent decisions in *Gorsline v. Fairfield Township* and *Environmental Defense Foundation v. Commonwealth*, indicates a willingness by the Supreme Court, including four of its newly elected justices, to limit (or perhaps prohibit) drilling in agricultural and residential zoning districts premised upon the Environmental Rights Amendment to the Pennsylvania Constitution.

Here, the Commonwealth Court had upheld the zoning ordinance based upon a three-part balancing test, which was subsequently revoked by the Supreme Court. As such, the Commonwealth Court must now decide the case based upon different criteria. [Interestingly, several unconventional wells have already been drilled pursuant to the challenged ordinance.]

The challengers, like those in the other cases noted above, are strong anti-fracking advocates, who seek to limit unconventional drilling to industrial zoning districts. However, such districts are oftentimes not available for leasing or applicable parcels are too small for the construction of well pads. Further, such restrictions limit the extraction of natural gas from a miniscule portion of the subsurface area within the municipality. On a favorable note to exploration and production companies, the Supreme Court specifically claimed that its recent decisions "should not be misconstrued as an indication that oil and gas development is never permitted in residential/agricultural districts or that it is fundamentally incompatible with residential or agricultural use."

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