

CITY OF SAINT MARYS COUNCIL PUBLIC HEARING

DECEMBER 21, 2015

- CALL TO ORDER** A public hearing of the City of Saint Marys was called to order by Mayor Robert Howard on Monday, December 21, 2015 at 6:00 p.m. The hearing was held in the Council Room of City Hall, 11 LaFayette Street. Notice of this hearing was posted at City Hall, and published in the Daily Press.
- PLEDGE TO THE FLAG**
- ROLL CALL** Present: Mayor Robert Howard, Gregory Gebauer, Nedward Jacob, Gary Anderson, Lou Radkowski, Sally Geyer, Bob Mohr, Manager Timothy Pearson and Solicitor Thomas Wagner.
- VISITORS** Visitors included: Chris Nestor, Rob Boulware, Chris Trejchel, Katie Weidenboerner, Stan Foster, Matt Quesenberry, Amy Cherry, Mason Catalone, Paul Fleming, Tony Perry, Jimmy DeLullo, Chuck Abraham, Richard Sadley, Alex Quirk, Carol Muhitch and Jesse Beimel.
- Public Hearing Opened:** Mayor Howard opening the public hearing at 6:01 p.m.
- Introduction: Solicitor Wagner** Solicitor Wagner explained the public hearing was a requirement when amending the City's Zoning Ordinance. Tonight's public hearing was duly advertised and copies of the proposed ordinance have been displayed. The function of tonight's public hearing was not to adopt the ordinance. At the end of the public hearing Council could decide to move forward with adoption of the draft presented at their regular meeting immediately following the public hearing. The purpose of the public hearing was to obtain public comment on the proposed ordinance.
- Public Comment Jim DeLullo** Jim DeLullo, Jr. from DeLullo Stone Sales, thanked Council for the opportunity to provide comments. He stated the Oil & Gas Industry had allowed his company to create seven new long term positions. He believed the continuing development of Oil & Gas resources was necessary. He listed various types of businesses that rely on the products supplied and employment needs by the Oil & Gas Industry operations. He believed the industry was heavily regulated by the State and Federal governments, but has not been given free rein to operate in the State. Although he supported Council's responsibility to protect its citizens he asked that Council consider the current regulations in place governed by the State and Federal governments before placing any additional requirements that may conflict with those current regulations. Additional new regulations at the City level will require oversight of its own that is already provided by the State and Federal Authorities. He believed strongly this resource was created for their use and also believed the industry had a history of managing its operations in a safe manner to the environment and the communities. He stated we all depend on oil and gas every day and until another resource is in place that provides us with all that we get from oil and gas, we need to work together for the benefit of all.
- Sally Geyer questioned if Mr. DeLullo opposed anything within the proposed ordinance and Mr. DeLullo responded he had not read it yet.
- Paul Fleming** Paul Fleming, resident of Haney's Hill St. Marys, stated he believed no one was against the industry or the wells. He did not want it next to his house. If the industry has the capability to drill 10 to 13 miles horizontally underground then they did not need to be 5,000 feet from his house. He questioned Section One of the ordinance and the conditional use process and Solicitor Wagner responded Section One

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was a Repealer, which repeals some of the language in the current ordinance. Mr. Fleming thanked outgoing Councilwoman Sally Geyer and the Oil & Gas Committee for including the public in the process of drafting the proposed ordinance. He would have liked to see a bigger setback and other provisions, but hoped Council adopted the ordinance as written.

Mike Brock

Mike Brock, resident, thanked the Oil & Gas Committee and Solicitor Wagner for allowing the input of citizens and he believed the ordinance was a step in the right direction. He agreed with Mr. Fleming that the setback of 1,250 feet wasn't adequate, but was certainly better than 500 feet. He commented on Section Five stating a setback of 1,250 feet from an occupied structure, but he questioned if there were any additional setbacks for private water wells other than the State requirement of 500 feet. Solicitor Wagner responded, there was not. Mr. Brock stated it would only make sense to protect the private water sources because for some of the residents City water was not even an option for them.

Solicitor Wagner stated the sections of Act 13 that dealt with setbacks from water sources and the requirements of testing. There is also a presumption that if the water wells (sources) have been tested and passed then subsequently become polluted, there is a presumption that the pollution was caused by the Oil & Gas well drilling activity. The burden then shifts to the driller and to prove its actions did not cause the pollution of the water. Solicitor Wagner commented he believed that was the reason the committee did not address that issue, because it was already addressed in a regulatory fashion.

Mr. Brock stated he understood the presumption of guilt, but believed there should be some type of remediation since an alternate water source would be a lengthy process. He again requested additional setbacks for a private water source be considered.

Matt Quesenberry, from the Elk County Planning Department, stated the setback for unconventional gas wells was 1,000 feet from a water source without the written consent.

Mike Brock stated he believed the 1,000 feet setback was for a municipal water source.

Chris Nestor

Chris Nestor, outside counsel for Seneca Resources, stated he had previously addressed Council on this subject. He stated Seneca Resources appreciated the opportunity to address Council again. Seneca owns significant Oil & Gas interests within the City limits and they were acquired fee interest many years before any discussion regarding this proposed ordinance. Mr. Nestor had submitted comments in July of 2015 and had endeavored to be involved in the process. They have relayed their concerns to City Council and the Solicitor regarding the proposed ordinance and offered to have informational fact gathering meetings with City Council. Seneca has had one informational meeting with Council and had not been involved with the Oil & Gas committee. He stated they believe the ordinance is unduly restrictive with respect to Oil & Gas development activities that would occur within the City. It will exclude development from many districts where it historically occurred and was permitted. They believed the ordinance singled out the Oil & Gas development for different treatment than other land uses and imposes extensive setbacks and other requirements that are not imposed on other land uses. He stated there will be a time and place to debate the legality of the ordinance. He was more interested in understanding the rationale behind the ordinance. He questioned why a

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conventional and unconventional well was limited to the Rural Conservation District and not allowed in the industrial district and Solicitor Wagner responded the industrial districts are largely fully developed so it was hard to envision how a well pad could be developed in those areas. There are probably some industrial districts along Ridgway Road that would be developed. Solicitor Wagner questioned Mr. Nestor if he was asking if that area would be appropriate for development and Mr. Nestor responded the entirety of the municipality with some exceptions would be appropriate for development. He stated the Oil & Gas development has been referred to as industrial activity and if so, then why it is not allowed within those districts?

Solicitor Wagner stated Mr. Nestor's original comments stated the ordinance was unduly restrictive from districts where it has historically been permitted and he questioned if there were other districts beside the industrial districts that should be considered and Mr. Nestor responded he had a map showing historically Oil and Gas wells have been drilled in almost every district.

Mr. Nestor moved on to terms and conditions, specifically the broad definition of occupied structures. He stated the definition of an occupied structure included hunting cabins, barns, chicken coops and hog pens and these restrictions do not apply to any other use within the City. He also commented hunting cabins are only used once or twice a year.

Solicitor Wagner explained it was the consensus of the committee the activity and noise level that occurs at an unconventional well site, was significant enough that it would be detrimental to any property used for residential or farm purposes. He further stated, around here, hunting cabins get used more than once or twice a year and farms operate year round and there were concerns that the noise levels could affect the farm animals just like it affects human beings.

Mr. Nestor questioned what studies or scientific data was used to make that determination and Solicitor Wagner responded he wasn't aware of any scientific data; he believed it was the common experience of the committee members. Mr. Nestor questioned if the City mapped the occupied structures that would be affected by the definition and Solicitor Wagner responded no, nor does the City know where the wells would be drilled.

Mr. Nestor moved on to the following question.

Why is a Special Exception being required for all unconventional wells regardless of the location or the distance to an occupied structure and Solicitor Wagner responded Council never considered allowing those high impact uses to simply be permitted. Without knowing exactly where the drilling would occur or the configuration of the well it was not easy to determine what impact the development would have on surrounding properties. Because of the high impact the committee felt it was necessary to have some sort of "gate keeping" of the granting of permits. This can be accomplished in one of two ways, first by conditional use which is regulated directly thru Council and the other is by Special Exception which is regulated by the Zoning Hearing Board. The committee, after some discussion, concluded it would be better to do the "gate keeping" thru a public body that has experience with Zoning issues. The committee felt a Special Exception was a professional and more reliable way to regulate the activity.

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Mr. Nestor moved on to allowable uses in the industrial district. He questioned why processing plants were allowed and compressor stations and wells were not and Councilman Anderson responded it was requested by Seneca.

Mr. Nestor disagreed and stated Seneca requested all Oil & Gas development within all of the industrial districts.

Councilman Anderson stated it was his recollection Seneca requested the processing plants be in the (RC) district because of the gathering process and not in the industrial district and Mr. Nestor responded it would make sense to have them in both.

Mr. Nestor move on to the following question.

Was it the intention of the proposed ordinance to require a Special exception approval for each well pad or each well and Solicitor Wagner responded for each well pad.

Mr. Nestor commented he believed that needed clarified in the ordinance and Solicitor Wagner stated he would look at that language because it was not the intent to require approval for each well.

Mr. Nestor moved on to the location and site requirements specifically the population density requirement. He questioned how the City determined it was an appropriate benchmark for location restrictions and Solicitor Wagner responded due to the intense nature of the use and the denser the population the greater impact the operation will have.

Mr. Nestor questioned the rationale or statistics for the requirement and he believed no other municipality had this requirement and the numbers will change over time and Solicitor Wagner responded the numbers will change and in the City's view it was a good thing. As population increases in an area the impact of this type of use will grow. It made sense as density increases that the regulations should be stricter. It was his recollection that City staff presented the criteria and he believed it made logical sense to be an appropriate method to regulate with.

Mr. Nestor questioned what the map area would look like and Solicitor Wagner responded the map was delineated and not hard to figure out where the areas are.

Mr. Nestor questioned if (the map) would be part of the zoning map and Solicitor responded probably not as the map will be a work in progress and will change over time.

Councilman Radkowski stated going back to the previous comments made regarding Councilman Anderson comments. Council had received meeting notes regarding the meeting with Seneca contained in an email dated January 30th from the Solicitor that stated Seneca wanted to remove the limitations on the compressor stations to the industrial district for many reasons including the safety of the residents and also the stations should be located near to the gas production area and the wells and the pipeline. Their plan was that there would be no more than two compressor stations in St. Marys probably in a northern remote area. These stations are normally built on skids so they can be removed after the need for them is exhausted. Mr. Nestor believed the information contained in the meeting notes was a misunderstanding.

Solicitor Wagner asked why Seneca would want to put a compressor station distant from a place where the gas is gathered. He stated we

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were distinctly left with the impression that compressor stations were best located in the field where the gas is originally collected.

Mr. Nestor responded he believed that was very much the case in the right circumstances but once you get done imposing the various setbacks it may become necessary to actually place a compressor station in an industrial zoned district because they are so pushed out of the municipality that it may not be possible if you look at the setbacks that are imposed and the impact in the ability to get gas out of the ground.

Solicitor Wagner questioned if Mr. Nestor was generally speaking or in a particular circumstance and Mr. Nestor responded they may not be able to put it in the field in a particular circumstance but what he was getting at was the further you push out and further restrict the drilling there is less areas available for a compressor station. By eliminating the industrial districts you are taking those out of the mix.

Mr. Nestor moved on to setback requirements.

Mr. Nestor stated the setback in the ordinance requires no well bore be located within 1250 feet from any occupied structure. He questioned what the basis for the setback requirements was and Solicitor Wagner responded he believed it was Council's assessment of a reasonable setback to protect abutting property owners.

Mr. Nestor questioned what studies were used to make the setback determination and was it recognized that the State legislature had a 500 foot setback in ACT 13 and Solicitor Wagner responded he knew what Act 13 contained before it was repealed.

Mr. Nestor stated that provision of Act 13 had not been repealed and Solicitor Wagner responded he understood what he was saying.

Mr. Nestor questioned setback that states no compressor or generator used in drilling or hydraulic fracking operations cannot be closer than 1000 feet to any occupied structure. He questioned why the City was imposing a setback on what he considered temporary construction which was not imposed on any other use and Solicitor Wagner responded it is an intense use.

Mr. Nestor stated City Council's function was to zone and when zoning you are zoning end use. He stated the ordinance was focused on the construction phase and what he considered temporary activity. He questioned what the basis was for imposing these requirements on a temporary construction activity as opposed to focusing on the end use which was a reclaimed well pad and a well head and Solicitor Wagner responded Mr. Nestor may characterize the activity as very short term but what we had read regarding the development of well pads was that there could be a dozen or more well bores on a single well pad. He believed we have seen by our own personal experience here in the City the development of a single well pad is not something that happens overnight. There is a lot of activity that occurs when the well is being drilled and fracked. It was not a fair comparison to compare oil & gas activity to a typical construction project. Because a typical construction project was one and done. The building is built and it's done. What we have read and experienced with a well pad is that it is not one and done, it could be twelve (wells), it could be extended over multiple years. He agreed with Mr. Nestor once the well was completed, an unconventional site was a pretty quiet operation. But in the meantime, the people who live in that area have to put up with what is a rather

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intense use. He believed Council acted well within its legal authority to regulate the location of uses and to do what it did.

Mr. Nestor stated a residential subdivision housing could take five years to complete, the same with a shopping center or factory, yet no restrictions are imposed on those types of uses.

Solicitor Wagner stated he believed they were arguing semantics and Mr. Nestor disagreed. Mr. Nestor believed the purpose of zoning was to focus on the end use.

Mr. Nestor moved on to setbacks for impoundments. The ordinance states the outer edge of an impoundment area cannot be closer than 1000 feet of any existing potable water serving an occupied structure. He wanted to understand what an impoundment area was since it was not defined in the ordinance. Mr. Nestor questioned, what was the outer edge, has the City mapped existing sources of potable water servicing occupied structures to know how this provision would apply, does it apply to a fresh water impoundment, if it does, why? And why is Section 301.7 of the Zoning Ordinance which is applicable to impoundments anywhere else in the municipality not applicable here?

Solicitor Wagner responded obviously we are talking about something other than a fresh water impoundment. We are talking about a facility that creates a serious potential for environmental damage. Solicitor Wagner understood these things are regulated and he has seen Seneca's operations and agreed it's tight and well done, but Seneca isn't necessarily the only operator.

Mr. Nestor stated the copy he had did not have a definition in it.

Solicitor Wagner stated the impoundment area speaks for itself. He questioned how can we have any misunderstanding of what an impoundment area is and Mr. Nestor responded if I'm going to store fresh water in an impoundment why do I need to be 1000 feet away from anything?

Solicitor Wagner responded that was a good question that should be looked at.

Mr. Nestor moved on to setback requirements which he stated could be reduced if the applicant demonstrates the topography surrounding the well pad is such that it provides a natural barrier for noise, dust and other adverse impacts to neighboring properties. He believed the provisions state the basis for setbacks in the ordinance are noise, dust, and other adverse impacts, which are not defined in the ordinance. He questioned what were the standards that have to be met in order to obtain a reduction and Solicitor Wagner responded the process that is being used to permit these operations is the Special Exception process. In that process the applicant who meets the general standards is by law entitled to a permit, unless those who object to that standard or the municipality can demonstrate circumstances that clearly justify the denial of the permit or the imposition of some restrictions, as approved. The burden would be on the neighbors or the City to come with some explanation of what those adverse effects are.

Mr. Nestor stated that is not what the ordinance says, it placed the burden on the applicant to make the demonstration and Solicitor Wagner responded then you are talking about reducing a setback.

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Mr. Nestor again questioned what the objective standards that must be met are and Solicitor Wagner responded the Special Exception process is a hearing based on a judicial process. It requires production of evidence and testimony. If a driller requests a reduction in a setback because of the obvious topography at the location the burden may be simply met but the neighbors and the contestants may believe there are other factors that haven't been considered and they can raise those factors. Then it will be up to the Zoning Hearing Board at that point to regulate what happens next in terms of producing evidence and may require more from both sides. Every one of these cases depends upon its own set of facts. We tried to legislate some flexibility into this ordinance to recognize that.

Mr. Nestor stated there still needs to be objective standards and believed there was no standards to be measured against so the applicant will not know what information is necessary to present to the Zoning Hearing Board.

Solicitor Wagner stated characteristically in zoning you have permitted uses, special exceptions and variances. It would be easy enough to handle this in a variance category. In that category you can only get the permit for what you want to do if you can demonstrate an unnecessary hardship exists. We did not go that far, we went somewhere in between with the special exception category. He understood that the drillers would like everything itemized to a tee but as a regulator you need to address the situations as they come up because they will never be the same. It made more sense to handle this in a more flexible way. If it gives the drillers some anxiety, he apologized for that, but he didn't believe it was unfair.

Mr. Nestor questioned why the reduction only be obtained based on topography, what if the operator could mediate those concerns by other means and Solicitor Wagner responded like for example, barriers and Mr. Nestor responded something like that.

Mr. Nestor moved on to sound barriers. He stated there was a provision that states the noise level at the well site shall not exceed an average of 65 dba or other applicable standards by federal law. He wanted to understand what purposed was served by measuring a sound standard at the property line rather than the nearest occupied structure and Solicitor Wagner responded the neighbors have a right to use their property free of interference from their neighbors. The property owner who has the occupied structure may use the area in between the occupied structure and the property line.

Mr. Nestor questioned what the basis was for the noise standard and Solicitor Wagner responded he believed that was a request from Seneca and it was also an OSHA standard.

Councilman Anderson stated it was an OSHA standard and Seneca discussed a decibel level outside of its compressor stations and Mr. Nestor responded Seneca doesn't own any compressor stations. It was determined the local compressor station was a different company.

Mr. Nestor questioned the rationale for the noise standards for what he believes was temporary construction. He believed the Oil & Gas industry was being singled out. He questioned the provision allowing a waiver of setback stating setbacks may be reduced by written consent of the neighboring landowner directly impacted by the setback reduction but the Zoning Hearing Board may require additional sound barriers. He questioned if you have a neighbor who is waiving the

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setback then what was the basis for the Zoning Hearing Board imposing additional sound barriers and Solicitor Wagner responded sometimes you need to protect people from themselves. Mr. Nestor also questioned what were the standards for the Zoning Hearing Board to require additional sound barriers and Solicitor Wagner responded it was not set in the ordinance.

Mr. Nestor moved on to the provision that requires as part of the application an applicant has to submit those materials required by PA Oil & Gas Act 13 as amended. He questioned does the applicant have to submit anything more than what is contained in the ordinance and Solicitor Wagner responded he would take a look at that one.

Mr. Nestor questioned why Gantt charts and project management records had to be submitted and Solicitor Wagner responded the intent was to have some perception of how long the activity will be ongoing.

Councilman Anderson commented he believed some of these items came from the discussion with Seneca. Seneca had stated they intend to develop these in a reasonably expeditious process. The idea was to get in writing what the development process was. He was sure Seneca had a Gantt chart showing the information needed.

Mr. Nestor disagreed with the need for Gantt charts and project management records.

Solicitor Wagner stated how long it may take may impact what conditions the Zoning Hearing Board will require.

Mr. Nestor questioned why a traffic plan was required and Solicitor Wagner responded the requirement of a traffic plan was removed from this current draft of the ordinance which now states a proposed schedule of traffic activity serving the pad or site including the estimated level and duration of trucking activity. Some sort of traffic information was important to confirm if the entrance to the site will be from a City or a State Road, activity at the intersection and how it would affect Police and Emergency Services. It was not unreasonable for the City to know how much traffic there was going to be and what type of traffic.

Mr. Nestor explained the ordinance requires a plan for turning lanes or other traffic control devices to alleviate traffic congestion issues on City or State highways. Presumably he believed the Zoning authorization could require offsite improvements and was beyond the City's authority according to the Municipal Planning Code. He disagreed with the requirement of dust control and installation of signs to discourage jake brakes for just them.

Solicitor Wagner responded they had more trucks than any other use that is conducted in the City. Mr. Nestor questioned if that was based on experience and Solicitor Wagner responded yes for sure it was, we have seen the trucks lined up.

Mr. Nestor stated there were a number of best practices they are imposed by this ordinance that the applicant must apply those best practices unless the applicant can demonstrate unnecessary hardship. He questioned what the applicable standard for the demonstration was and Solicitor Wagner responded there was not a standard stated and what our best practices were was an open question.

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Mr. Nestor questioned the provision that stated transportation to and from the site will be by pipeline when feasible. It was not defined what is feasible and who was to make that determination based on what standards and other issues that he previously addressed. He believed a lot of questions that need to be addressed and answered and properly vetted before City Council takes further action on this ordinance. He was leaving a map for Council's review showing the prohibitive zones and the impact of the 1,250 foot buffer and the location of previously drilled wells in the City which impacted 26 percent of Seneca's acreage.

Councilman Radkowski questioned if the 1,250 foot setback would mean they would have no way to get to that or does it mean you just can't put a well pad and Mr. Nestor responded it indicates where surface facilities cannot be located and the map does not include the setbacks from occupied structures as defined in the ordinance or any of the other restrictions imposed by DEP.

Councilman Anderson questioned how far out can they drill out horizontally and Mr. Nestor responded it varies based on geology and the well and Councilman Anderson asked one to two miles and Mr. Nestor responded he wasn't sure.

Rob Boulware from Seneca responded it depends on geology and he believed the area has more faults than most people realize so they were limited to how long the laterals can reach.

Councilman Anderson questioned if you put that lateral in, how it is affected and Mr. Boulware responded it varies and if you look at the wells that have been drilled in this area and look at the wells drilled in other areas there is no set distance. There will be different lateral lengths for wells on the same well pad and may be 1,000 to 2,000 feet shorter.

Mr. Nestor thanked Council for their time.

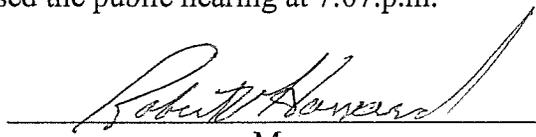
Solicitor Wagner noted for the record that comments were received from Mr. Quesenberry regarding the ordinance and then asked Matt Quesenberry the Elk County Planner if the review of the ordinance was performed by the Elk County Planning Department or the Elk County Planning Commission Board. Mr. Quesenberry confirmed the comments were from the Planning Department. Solicitor Wagner questioned if the Commission would review the ordinance and Mr. Quesenberry responded it would be unlikely. He explained due to time constraints and other reasons the department reviewed the ordinance. If Council requested the board could review the ordinance.

Solicitor Wagner noted for the record that the St. Marys Planning Commission also reviewed the ordinance at their last meeting and did not have any recommendations.

Councilman Mohr stated the Council and the Planning Commission worked on this ordinance for a year.

Mayor Howard closed the public hearing at 7:07.p.m.


Recording Secretary


Mayor