

Regulating Hydraulic Fracturing

Radesha Barnes

As the world advances, so does the demand for natural resources such as gas, oil, and coal; however, the extraction process of these natural resources poses a threat to the health of local communities, and therefore can be regulated by local governments. In the past the law has given local governments the authority to restrict, or at times ban oil and natural gas productions that were found to be harmful to local communities. Chemical Specialties Mfrs. Ass'n v. Jorling, 611 N.Y.S.2d 663(A.D. 3 Dept.1994) and Washington v. Dutchess Quarry & Supply, 673 N.Y.S.2d 183(A.D. 2 Dept.1998) are two of the many cases that use zoning ordinances to regulate the oil and gas extraction industry. Zoning ordinances are laws made by a local board of directors, to protect the safety, welfare, and health of a community. In recent discoveries of natural gas is made through a process called Hydraulic Fracturing, drilling companies have also generated a new controversial legal issue. Hydraulic Fracturing, also known as Fracking, is done by injecting more than a million gallons of sand, chemicals, and water into wells thousands of feet below the surface. This combination causes the Marcellus Shale (where gases are found) to crack and release natural gas. While the end product of Fracking (Shale Gas) is safe to the environment, the process itself is detrimental to the health of local communities, because the gases release toxins and contaminate the drinking water. Because Hydraulic Fracturing threatens the health, safety, and welfare of the public, local governments have the power to regulate the operation of oil and gas producers.

Past legal disputes have used zoning ordinances to regulate manufacturers from extracting natural resources in local communities. Many of these cases are similar to Hydraulic Fracturing. For instance, in the case of Chemical Specialties Mfrs. Ass'n v. Jorling, 611 N.Y.S.2d 663(A.D. 3 Dept. 1994), the Commissioner of Environmental Conservation regulated an industrial company because their products were using high levels of pesticides (DEET), which posed a threat to a local community; his regulation was challenged by industrialists. The New York Supplement states, "The Supreme Court, Albany County, Cardona, J., annulled regulation, and Commissioner appealed id.at 663."

The Supreme Court felt the Commissioner's decision to regulate the industrial company did not have a rational basis. Once appealed, "The Appellate Division held that: (1) Authority to restrict use of pesticides included authority to prohibit distribution, sale or use of pesticides; (2) regulation had rational basis; and (3) regulation did not automatically revoke registration of products affected by ban id. at663." Because the pesticide (DEET in this case) posed a threat to the health

of the community, the Commissioner's decision to regulate industrialists was accurate because it was in the town's best interest. All in all, the Commissioner's amendment to limit the percentage of DEET manufacturers were allowed to use was denied by the Supreme Court of Albany County, but later deemed just by an Appellate Court. Although this case does not directly speak of drilling, it does demonstrate how zoning ordinances are significant when regulating oil and natural gas companies infringing on local communities.

Another case that used zoning ordinances to regulate oil and gas operations which is relevant to the issue of Hydraulic Fracturing, is the case of Washington v. Dutchess Quarry & Supply, 663N.Y.S.2d 183(A.D. 2 Dept. 1998). In this case, the town of Washington commenced action to enjoin the ongoing operation of sand and gravel mine, for this was prohibited by the town's zoning laws. Although the Supreme Court of Dutchess County denied the injunction and the town's motion for summary judgment, the town appealed the decision. The Appellate Division held that "(1) town zoning law was not superseded by Mined Land Reclamation Law (MLRL); (2) operation of mine without necessary permit was thus not legal nonconforming use exempt from town zoning ordinances; (3) provision of zoning ordinances prohibiting expansion was proper exercise of town's police powers to limit expansion of nonconforming mine use id.at183." This case was modified under Zoning and Planning laws of the town of Washington which states, "while a locality may not regulate the mining process, it may utilize its zoning ordinances to prohibit mining in its jurisdiction id.at183." Even though this case uses zoning ordinances to ban mining manufacturers, it is a perfect example of how to ban Fracking through zoning ordinances.

In retrospect, because Hydraulic Fracturing conflicts with town zoning ordinances, it gives local governments the authority to regulate oil and natural gas operations. This authority is given to protect the health, safety, and overall welfare of local communities. As mentioned earlier, there are many ways for local governments to regulate Hydro-Fracking through zoning ordinances. In the case of Chemical Specialties Mfrs. Ass'n v. Jorling, id.at663, zoning ordinances were used to restrict the use, sale, and distribution of pesticides to protect a local community; an Appellate Court confirmed that decision. In Washington v. Dutchess Quarry & Supply, id.at183, an example was given in which a town used zoning ordinances to ban mining manufacturers from mining within its jurisdiction. While there are some cases that may only restrict oil and natural gas producers by using zoning ordinances, there are others that can ban oil and natural gas extractions completely.

Nominating faculty: Professor Jeannette Espinoza, Law and Paralegal Studies
1202, Department of Law and Paralegal Studies, School of Professional Studies,
New York City College of Technology, CUNY.

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