

THE BOROUGH OF EAST PITTSBURGH ZONING HEARING BOARD

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THE BOROUGH OF EAST
PITTSBURGH

CIVIL DIVISION

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF THE
ZONING HEARING BOARD OF
THE BOROUGH OF EAST
PITTSBURGH**

Filed on Behalf of:

Zoning Hearing Board of the Borough of
East Pittsburgh

Counsel of Record:

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Pa. I.D. #203742

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE ZONING HEARING
BOARD OF THE BOROUGH OF EAST PITTSBURGH**

AND NOW, comes the Zoning Hearing Board for the Borough of East Pittsburgh (“ZHB”), by and through its solicitor Michael T. Kornis, Esq. of Maiello, Brungo, Maiello, LLP, and follows the following findings of fact and conclusions of law in support of the decision of the Borough of East Pittsburgh Zoning Hearing Board to deny the appeal of the Appellant Merrion Oil from the action of the Borough of East Pittsburgh Council to rescind a conditional use approval for oil and gas operations. .

PROCEDURAL HISTORY AND FACTS

1. On November 17, 2017, The Appellant, Merion Oil, applied for a conditional use for the construction of an unconventional oil and gas well on a property partially located in the Borough of East Pittsburgh, located at the Edgar Thompson Steel Mill.

2. Said application stated that the Appellant was seeking approval under Sections 800 and 1200 of the East Pittsburgh Zoning Ordinance. (Tr. 19-22).

3. Said application was approved by the Council of the Borough of East Pittsburgh at a public meeting on December 19, 2017. (Tr. 42-44).

4. Representatives of the Appellant, Jonathan Teacoach and Jake Polochak, were present at said meeting. (Id.)

5. Representatives of the Appellant acknowledge that they were aware that the application for a conditional use had been approved. (Id.)

6. The Council of the Borough of East Pittsburgh approved written minutes of the meeting which reduced the decision of the Borough to writing. (Tr. 42-51).

7. The Applicants began seeking approvals for various permits needed to utilize the site, including but not limited to seeking approval from the Pennsylvania Department of Environmental Protection. (Tr. 23, 29-35)

8. As part of its application to the DEP, the applicant submitted the Borough's minutes of the December 19, 2017 meeting to the Pennsylvania Department of Environmental Protection as written proof of the Borough's decision. (CHECK)

9. Applicant conducted seismic testing of the site. (Tr. 22, 23 and 38).

10. Appellant has not conducted any construction work on the site.

11. Appellant has not received any permits for any construction on the site. (Tr. 50-52)

12. Appellant has not sought or received any building permit for the site.

13. Appellant had not sought or received any occupancy permit for the site as of Jan 21st, 2020. (Tr. 66).

14. Appellant has not asked for an extension of the time for its conditional use.

15. The Pennsylvania Department of Environmental Protection, in its response to the Appellant, said that it required a more specific written approval from the Borough than the minutes provided to Appellant. (Tr. 54-58).

16. In response to the DEP, the Appellant requested a written approval from the Borough, which was provided on December 18, 2018. (Id.)

17. On January 21, 2020, pursuant to Section 806 of the Zoning Ordinance of the borough of East Pittsburgh, the Council of the Borough voted to rescind the conditional use approval of the Appellant for failure to commence use of this within two years of the issuance of the conditional use.

18. On January 31, 2020, the Appellant filed an appeal of said decision to the Zoning Hearing Board of the Borough of East Pittsburgh.

19. On June 15, and June 22, the ZHB held hearings on the subjects of the Appellants appeal.

20. With the consent of all parties, following the hearing it was agreed that the record would be held open until the parties submitted findings of fact and conclusions of law.

21. Said findings of fact were submitted on September 10th, 2020.

CONCLUSIONS OF LAW

22. The Borough Zoning ordinance includes two sections at issues in the case, Section 800, and Section 1200.

23. Section 800 covers all Conditional Use Applications in the Borough, while section 1200 applies specifically to oil and gas.

24. Section 806 of the Borough zoning ordinance states as follows

- a. “The grant of a conditional use shall expire two years after the date of the Borough Council written decision unless (1) the applicant has applied for and obtained a building permit and commenced construction; or (2) in a case where the conditional use does not require the issuance of a building permit, the applicant has applied for and obtained an occupancy permit and has commenced the use which is the subject of the conditional use approval. Expiration of the conditional use approval under the Article shall require the applicant to re-apply for conditional use approval.”

25. The Zoning Hearing Board of the Borough of East Pittsburgh is responsible for interpreting the East Pittsburgh Zoning Ordinance.

26. The interpretation of the ordinance by the ZHB is entitled to great deference by the Courts.

27. As the approval in this case is a conditional use, by the plain language of the ordinance, Section 806 applies.

28. As of Jan 21, 2020, Appellant had not requested a building permit from the Borough of East Pittsburgh or any other entity.

29. As of Jan 21, 2020, Appellant had not requested an occupancy permit from the Borough of East Pittsburgh or any other entity.

30. As of Jan 21, 2020, Appellant had not begun any construction on the site in question.

31. As of Jan 21, 2020, Appellant had not begun to drill or conduct any other oil and gas operation on the site in question.

32. Appellant claims that nothing in Article 800, including Section 806, applies because this is an oil and gas operation governed by Section 1200.

33. Nothing in Section 1200 states that Section 800 does not apply.

34. Appellant sought a conditional use, and therefore section 806 applies as above.

35. Appellant further claims that, even if Section 806 applies, the two-year period for use of the site did not commence until December of 2020.

36. Because the Appellant had actual notice of the decision, the two-year period began on December 17, 2017

37. Even if the two-year period did not begin on December 17, 2017, the Borough produced a decision in writing when the Borough minutes were approved.

38. Appellant filed said minutes with the Pennsylvania DEP as written proof of the decision, indicated that Appellant believed that the minutes sufficed for this purpose.

39. Section 806 of the Borough of East Pittsburgh Zoning Ordinance gives Council has authority to rescind a conditional use within two years if the use has not commenced.

40. Under any calculation, two years had elapsed by January 21, 2020.

41. The use in question was the operation of an oil and gas operation.

42. No oil and gas operations have commenced at the site.

43. No construction of any oil and gas operation have commenced on the site.

44. No drilling activity has taken place on the site.

45. Not building permit or occupancy permit had been requested for the site.

46. The Borough of East Pittsburgh Council had legal authority to rescind the conditional use if the use had not commenced.

47. Appellant had not applied of a building permit or an occupancy permit, and had not received any permit for construction of any kind by January 21, 2020.

48. Appellant had not commenced any use of the property by January 21, 2020.


49. Section 806 of the Borough of East Pittsburgh Zoning Ordinance does not include any requirement that the Borough notify an applicant that the permit will expire.

50. The two-year requirement of Section 806 is stated plainly in the law, and failure to be familiar with the terms of the zoning ordinance do not excuse failure to comply with it.

For the above reasons, the appeal of Merion Oil is DENIED and the decision of the Council of East Pittsburgh Borough to rescind the conditional use approval of Merion Oil for the operation of an oil and gas operation is SUSTAINED.

RESPECTFULLY SUBMITTED,
MAIELLO, BRUNGO & MAIELLO LLP

By:



Michael Korn (203742)

Attorney for The Zoning Hearing Board of
the Borough of East Pittsburgh

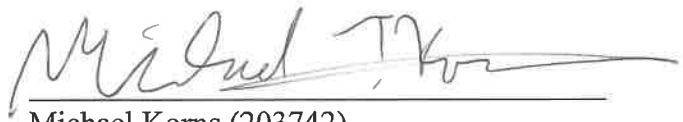
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that the above findings of fact and conclusions of law were served on the following parties

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A handwritten signature in black ink, appearing to read "Michael Korn", written over a horizontal line.

Michael Korn (203742)
Attorney for The Zoning Hearing Board of the
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