

TRIBUNE-REVIEW

Law professor casts doubt on drilling ban for Murrysville

By Paul Pattera

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A University of Pittsburgh law professor said any moratorium or ban a municipality might want to enact concerning the drilling of Marcellus shale would be unlikely to hold up in court, but there were arguments that could be tried.

Jules Lobel, also the vice president of the Center for Constitutional Rights, spoke before Wednesday's meeting of Murrysville Council.

The municipality has drafted a proposed amendment to the zoning ordinance geared toward regulating the exploration or production of oil or natural gas from a shale reservoir or source rock.

A large crowd was in attendance last night, with nearly every seat in council's meeting room filled.

Interest in extracting natural gas has increased in recent years as companies tap the state's Marcellus shale formation.

Some citizens have called for the municipality to place a ban on the drilling, or at least a moratorium. They were told at the public hearing in January the municipality is fairly handcuffed by the Pennsylvania Oil and Gas Act.

"The municipality of Murrysville would have several very good arguments; colorful, nonfrivolous, good arguments to make in favor of such a moratorium," Lobel said.

He explained one is covered in a portion of the state constitution regarding the right to clean water and healthy environment.

"The oil and gas act gives municipalities the right to take measures in response to either industrial or drilling or mineral activities, which would pose a serious threat and danger to the environment and to the water and clean air of a municipality," Lobel said. "This is an argument ... that's never been ruled on explicitly by the (state) Supreme Court. But I think it's an argument that would have a chance to succeed."

Lobel said the Oil and Gas Act does not allow the enforcement of public nuisance laws.

"I think there's a good argument that Marcellus shale fracking and drilling constitutes public nuisance," Lobel said, adding the city of Buffalo imposed a ban under a public nuisance theory. "I think if Murrysville were to impose a moratorium

or a ban saying there is substantial evidence in many cases this constitutes a public nuisance it would at least force the courts to give them a hearing."

Some residents spoke last night in favor of drilling, expressing confidence it would be regulated by the municipality.

"It's a good thing," resident Maury Fey said. "We could produce it here, right here. My goodness, why buy it from elsewhere?"

Resident Leona Dunnett, who has spoken in favor of banning the drilling, asked that the matter be fully explored before any such regulations are approved.

"We definitely need to raise awareness, do more education and think this out very clearly," she said.

Council President Joan Kearns has said it could be May before regulations regarding the shale reservoir or source rock are approved.

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