

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PENNSYLVANIA GENERAL ENERGY	:	NO. 11 - 01,875
COMPANY, LLC,	:	
Appellant	:	
	:	CIVIL ACTION - LAW
vs.	:	LAND USE APPEAL
	:	
WATSON TOWNSHIP ZONING HEARING BOARD,	:	
Appellee	:	

**OPINION AND ORDER**

Before the court is the Petition to Intervene filed by Vern VanOrder and Victoria VanOrder on November 14, 2011.<sup>1</sup> A hearing on the petition was held January 11, 2012.

Appellant, a company involved in the drilling and production of natural gas in this area, applied to Watson Township for a special exception and two variances in order to use a certain property situate on State Route 44 as an office and water transfer station. After five public hearings, the Zoning Hearing Board denied the application. Appellant filed an appeal and the VanOrders now seek to intervene.<sup>2</sup>

Pennsylvania Rules of Civil Procedure which address intervention by non-parties, specifically Rule 2327, “Who May Intervene”, and Rule 2329, “Action of Court on Petition”, have been interpreted by the Commonwealth Court to provide:

that if the petitioner is a person within one of the classes described in Rule 2327, the allowance of intervention is mandatory not discretionary, unless one of the grounds for refusal under Rule 2329 is present. Equally, if the petitioner does not show himself to be within one of the four classes described in Rule 2327, intervention must be denied, irrespective of whether any of the grounds for refusal in Rule 2329 exist.

Larock v. Sugarloaf Township Zoning Hearing Board, 740 A.2d 308, 313 (Pa. Commw. 1999).

In the instant matter, the VanOrders are seeking to intervene on the basis of subsection (4) of Rule 2327, which requires intervention if “the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a

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<sup>1</sup> A third petitioner, Curtis Bierly, withdrew his request to intervene at the time of argument.

judgment in the action.” Pa.R.C.P. 2327(4). The interest the VanOrders assert will be affected by Appellant’s request for a special exception and variance is that of their right to peaceable enjoyment of their property. In that regard, it is well settled that “owners of property in the immediate vicinity of property involved in zoning litigation have the requisite interest to fit under the definition of Pa. R.C.P. No. 2327(4), and such property owners have grounds to intervene in the litigation.” Township of Radnor v. Radnor Recreational, LLC, 859 A.2d 1 (Pa. Commw. 2004). While Appellant argues that the VanOrders do not live in the “immediate vicinity” of the proposed water transfer station, the Court disagrees. The evidence showed the VanOrders live within a few hundred feet of the property at issue and can see and hear the activity there. The Court considers such a location to be within the definition of “immediate vicinity”. Therefore, intervention must be allowed unless one of the grounds for refusal is present.

Appellant contends the Court should refuse intervention on the basis that the VanOrders’ interest in this matter will be adequately represented by the Township, Pa.R.C.P. 2329(2), as the Township has intervened in support of the Zoning Hearing Board’s decision. It concerns the Court, however, that the Township may not be in a position to argue the VanOrders’ position with the same conviction they would. As the property at issue lies approximately in the center of Watson Township, and as the evidence showed the proposed water transfer station would reduce truck traffic on Route 44 north of the station, the Township may find pressure being brought to bear by those citizens who live north of the site to take a position in favor of the project, and it will therefore have to balance the interests of those citizens against the interests of the citizens who live south of the project, including the VanOrders. Indeed, the Township may seek to engage in settlement negotiations which would address the concerns of all the citizens in a balanced manner, and such will certainly not consider the interests of the VanOrders personally. Therefore, the Court rejects the notion that it must refuse intervention on this basis, and accordingly, will enter the following:

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<sup>2</sup> Watson Township filed a Notice of Intervention, intervening as of right, on November 10, 2011.

**ORDER**

AND NOW, this 24<sup>th</sup> day of January 2012, for the foregoing reasons, the Petition to Intervene filed by Vern VanOrder and Victoria VanOrder is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

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