

Case Law Shorts

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Case Law Shorts *New York Court of Appeals*

New York’s Highest Court Upholds Town-Wide Fracking Ban. Oil and Gas company (“Company”) sought to extract methane via fracking. Town, seeking to “[p]reserve the rural and small town character of the Town of Dryden, and the quality of life its residents enjoy, as the town continues to grow in the coming decades”, passed a zoning ordinance that prohibited “all oil and gas exploration, extraction and storage activities” within the town. Company brought suit to invalidate the ordinance arguing that the Environmental Conservation Law preempted local laws that proscribe oil and gas operations. Alternatively, Company maintained that a town-wide ban is prohibited (towns in New York are contiguous). Town had declared, in adopting the ordinance, that mining in rural areas would endanger the community by depositing “toxins into the air, soil, water, environment and in the bodies of residents”. The lower courts ruled in favor of Town and the Court of Appeals sustained. As to preemption, Company pointed the Court to ECL 23-0303[2] – “The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries;”. In response, the Court juxtaposed ECL regulation of “how” activities are conducted vs. town zoning that regulates “where” activities are conducted and rejected the preemption claim. . . . “ECL 23-0303 (2) is most naturally read as preempting only local laws that purport to regulate the actual operations of oil and gas activities, not zoning ordinances that restrict or prohibit certain land uses within town boundaries. Plainly, the zoning laws in these cases are directed at regulating land use generally and do not attempt to govern the details, procedures or operations of the oil and gas industries.” As to the town-wide ban, the Court again drew the distinction between regulation of activities vs. regulation of land use. . . . “the distinction is between ordinances that regulate property uses and ordinances that regulate mining activities”. The Court stated “[m]anifestly, Dryden and Middlefield engaged in a reasonable exercise of their zoning authority as contemplated in Gernatt when they adopted local laws clarifying that oil and gas extraction and production were not permissible uses in any zoning districts. The Towns both studied the issue and acted within their home rule powers in determining that gas drilling would permanently alter and adversely affect the deliberately-cultivated, small-town character of their communities.” Company noted in its brief that the Colorado Supreme Court came to a different conclusion under similar circumstances. Matter of Matter of Wallach v Town of Dryden, 2014 NY Slip Op 04875, Court of Appeals, June 30, 2014
[opinion](#)