

Commonwealth Docket Sheet

Commonwealth Court of Pennsylvania

Docket Number: 1229 CD 2015

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January 18, 2018



CAPTION

Delaware Riverkeeper Network,
Clean Air Council, David Denk,
Jennifer Chomicki and Joann Groman

v.

Middlesex Township Zoning
Hearing Board

v.

R.E. Gas Development, LLC and
Middlesex Township

Appeal of: R.E. Gas Development, LLC

CASE INFORMATION

Initiating Document: Notice of Appeal

Case Status: Decided/Active

Case Processing Status: June 7, 2017 Filing of Decision or Opinion

Journal Number: 13-11-2016

Case Category: Civil Case Type(s): Zoning/Land Use

CONSOLIDATED CASES

RELATED CASES

Docket No / Reason	Type	Docket No / Reason	Type
1323 CD 2015 Ct Order - Sua Sponte	Consolidated	2609 CD 2015 Similar Issue(s)	Related
2609 CD 2015 Ct Order - Sua Sponte	Consolidated		

COUNSEL INFORMATION

Designated Appellant Groman, Joann

Pro Se: No

IFP Status:

Attorney: Yeager, Jordan Berson
Law Firm: Curtin & Heefner LLP
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Phone No: (267) 898-0570

Fax No:

Attorney: Minott, Joseph Otis
Law Firm: Clean Air Council
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Fax No:

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COUNSEL INFORMATION

Designated Appellant **Groman, Joann**

Pro Se: No

IFP Status:

Attorney: Williams, Lauren M.
 Law Firm: Curtin & Heefner LLP
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 Law Firm: Clean Air Council
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Designated Appellant **Denk, David**

Pro Se: No

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COUNSEL INFORMATION

Designated Appellant Delaware Riverkeeper Network

Pro Se: No

IFP Status:

Attorney: Yeager, Jordan Berson
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Attorney: Williams, Lauren M.
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Fax No:

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 Law Firm: Clean Air Council
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COUNSEL INFORMATION

Designated Appellant **Clean Air Council**

Pro Se: No

IFP Status:

Attorney: Yeager, Jordan Berson
 Law Firm: Curtin & Heefner LLP
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Phone No: (267) 898-0570 Fax No:

Attorney: Minott, Joseph Otis
 Law Firm: Clean Air Council
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 Law Firm: Clean Air Council
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COUNSEL INFORMATION

Designated Appellant**Chomicki, Jennifer**

Pro Se: No

IFP Status:

Attorney: Yeager, Jordan Berson
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Attorney: Jacobs-Smith, Aaron Russell
 Law Firm: Clean Air Council
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Designated Appellee**R.E. Gas Development, LLC**

Pro Se: No

IFP Status:

Attorney: Colosimo, Kevin L.
 Law Firm: Frost Brown Todd LLC
 Address: Union Trust Building
 501 Grant Street, Suite 800
 Pittsburgh, PA 15219

Phone No: (412) 513-4300 Fax No: (412) 513-4299

Attorney: Craig, Daniel Patrick
 Law Firm: Frost Brown Todd LLC
 Address: One PPG Place, 2800
 Pittsburgh, PA 15222

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COUNSEL INFORMATION

Designated Appellee Middlesex Township Zoning Hearing Board

Pro Se: No

IFP Status:

Attorney: Gallagher, Michael D.
 Law Firm: Murrin, Taylor, Flach Gallagher & May
 Address: Murrin Taylor Flach ET AL
 110 E Diamond St
 Butler, PA 16001-5999
 Phone No: (724) 282-3141 Fax No:

Attorney: Gallagher, Sean Michael
 Law Firm: Murrin, Taylor, Flach & Gallagher
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Designated Appellee Middlesex Township

Pro Se: No

IFP Status:

Attorney: Hnath, Michael David
 Law Firm: Dillon McCandless King Coulter & Graham L.L.P.
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 128 W Cunningham St
 Butler, PA 16001-5742
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Designated Appellee Geyer, Robert

Pro Se: No

IFP Status:

Attorney: Linn, Douglas G., II
 Law Firm: Jennifer R. Linn & Associates
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 Ste 6
 Cranberry Township, PA 16066
 Phone No: (724) 591-8263 Fax No:

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
07/17/2015	Notice of Appeal	85.50	07/20/2015	2015-CMW-H-001603	85.50

AGENCY/TRIAL COURT INFORMATION

Court Below: Butler County Court of Common Pleas
 County: Butler Division: Butler County Civil Division
 Order Appealed From: July 9, 2015 Judicial District: 50
 Documents Received: July 20, 2015 Notice of Appeal Filed: July 17, 2015
 Order Type: Decision
 OTN(s):
 Lower Ct Docket No(s): AD15-10429

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Lower Ct Judge(s): Yeager, S. Michael
Judge

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content Description
Trial Court Record	September 17, 2015	4 boxes

Date of Remand of Record: October 1, 2015

BRIEFING SCHEDULE

Designated Appellant	Designated Appellee
Chomicki, Jennifer Brief	Geyer, Robert Brief
Due: March 28, 2016 Due: June 20, 2016	Due: May 12, 2016 Filed: May 19, 2016
Clean Air Council Brief	Middlesex Township Brief
Due: March 28, 2016 Due: June 20, 2016	Due: May 12, 2016 Filed: May 12, 2016
Delaware Riverkeeper Network Brief	Middlesex Township Zoning Hearing Board Brief
Due: March 28, 2016 Due: June 20, 2016	R.E. Gas Development, LLC Brief
Reproduced Record	Supplemental Reproduced Record
Due: March 28, 2016	Due: Filed: May 12, 2016
Denk, David Brief	
Due: March 28, 2016	
Groman, Joann Brief	
Due: March 28, 2016	

DOCKET ENTRY

Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 17, 2015	Notice of Appeal Filed Delaware Riverkeeper Network Clean Air Council Denk, David Chomicki, Jennifer Groman, Joann		Designated Appellant Designated Appellant Designated Appellant Designated Appellant Designated Appellant	
July 21, 2015	Notice of Docketing Appeal Exited Commonwealth Court Filing Office			07/21/2015

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
July 31, 2015	Docketing Statement Filed Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
August 12, 2015	Order Filed Pellegrini, Dan			08/13/2015
	Document Name: upon review of this matter, and it appearing that			
	Comment: appellant seeks review of the July 9, 2015 order of the Court of Common Pleas of Butler County that imposed a stay of Middlesex Township Ordinance No. 127 and "all activity relative to unconventional natural gas development as presently being conducted at 451 Denny Road, Middlesex Township, Butler County, Pennsylvania, pending final adjudication of this proceeding" pursuant to Section 1003-A(d) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §11003-A(d), the parties shall address the appealability of the July 9, 2015 order in their principal briefs on the merits. See Pa. R.A.P. 311; 313; 20 West's Pennsylvania Appellate Practice, §311:48.			
August 14, 2015	Application to Expedite Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
August 17, 2015	Order Filed Simpson, Robert E.			08/17/2015
	Document Name: upon review of appellant R.E. Gas Development,			
	Comment: LLC's "Application for Expedited Briefing Schedule and Advancement of Argument," it is hereby ordered that appellees shall file and serve answers to the Application no later than 12:00 pm, on Friday, August 21.			
August 20, 2015	Entry of Appearance Gallagher, Sean Michael	Middlesex Township Zoning Hearing	Designated Appellee	
August 20, 2015	Answer to Application to Expedite Jacobs-Smith, Aaron Russell	Chomicki, Jennifer	Designated Appellant	
	Jacobs-Smith, Aaron Russell	Clean Air Council	Designated Appellant	
	Jacobs-Smith, Aaron Russell	Delaware Riverkeeper Network	Designated Appellant	
	Jacobs-Smith, Aaron Russell	Denk, David	Designated Appellant	
	Jacobs-Smith, Aaron Russell	Groman, Joann	Designated Appellant	
August 21, 2015	Answer Filed Gallagher, Sean Michael	Middlesex Township Zoning Hearing	Designated Appellee	
August 25, 2015	Order Denying Application to Expedite Quigley, Keith B.			08/26/2015
	Document Name: upon consideration of appellant's			
	Comment: Application for Expedited Briefing Schedule and Advancement of Argument and the answer thereto filed on behalf of appellees Delaware Riverkeeper Network, Clean Air Council, David Denk, Jennifer Chomicki, and Joann Groman, and the answer filed on behalf of appellee Middlesex Township Zoning Hearing Board, the Application for Expedited Briefing Schedule and Advancement of Argument is denied.			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 17, 2015	Trial Court Record Received Butler County Court of Common Pleas			
September 25, 2015	Designation of Contents of Reproduced Record Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
September 25, 2015	Designation of Contents of Reproduced Record Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
September 25, 2015	Application for Remand Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson	Chomicki, Jennifer Clean Air Council Delaware Riverkeeper Network Denk, David Groman, Joann	Designated Appellant Designated Appellant Designated Appellant Designated Appellant Designated Appellant	
September 28, 2015	Designation of Contents of Reproduced Record Hnath, Michael David Document Name: Statement of Issues R.E. Gas Development, LLC	Middlesex Township	Designated Appellee	

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
September 30, 2015	Order Filed McCullough, Patricia A.			10/01/2015
	Document Name: upon consideration of the parties' joint			
	Comment: application for relief, it appears that these actions are appeals from the trial court's order granting a stay of the effect of a Township ordinance pursuant to Section 1003-A of the Pennsylvania Municipalities Planning Code, 53 P.S. §11003-A. It further appears that appellants have appealed the stay order, asserting it has the practical effect of granting a preliminary injunction and is therefore appealable pursuant to Pa. R.A.P. 311.			
	Following the certification of the record to this Court, the trial court scheduled an argument on the merits of the underlying land use appeal. See Pa. R.A.P. 311(h) (providing that Pa. R.A.P. 1701(a), which prohibits a trial court from proceeding further in a matter after an appeal is taken, is not applicable when interlocutory appeal as of right is taken from an order granting an injunction). However, the parties aver that the trial court canceled the hearing because the trial court required "the full hard copy record to consider the case." (Joint application for relief at paragraph 6.)			
	The parties now ask this Court to remand the certified record to the trial court so the trial court can "rule on the merits of Appellees' land use appeal in advance of this Court's consideration of the appeal from the stay order." (Joint application at paragraph 13.) In light of the parties' agreement to remand the certified record in this action and the trial court's expressed desire to utilize the certified record from the stay proceedings in its disposition of the land use appeal, the joint application for relief is granted. The Chief Clerk is directed to remit the certified record to the trial court.			
	It appearing, however, that this Court will be unable to perform its appellate function in the absence of the certified record, these consolidated actions shall be stayed pending the trial court's return of the certified record to this Court. The parties shall file a status report with this Court within 30 days of the trial court's disposition of the land use appeal or by December 30, 2015, whichever is earlier.			
	Jurisdiction retained.			
October 1, 2015	Remitted Commonwealth Court Filing Office			
	Document Name: SEE 9/30/15 ORDER			
December 29, 2015	Praecipe Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
	Document Name: (Change of address)			
December 29, 2015	Status Report Filed Colosimo, Kevin L. Craig, Daniel Patrick Hnath, Michael David	R.E. Gas Development, LLC R.E. Gas Development, LLC Middlesex Township	Designated Appellee Designated Appellee Designated Appellee	
	Document Name: Joint			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
February 2, 2016	Order Sua Sponte for Consolidation Colins, James G.			02/03/2016
	Document Name: NOW, February 2, 2016, upon consideration of the parties' joint status report, and it appearing that Comment: the trial court has issued an opinion and order on the merits of the underlying land use appeal, and it further appearing that the trial court's merits order was appealed to this Court and is docketed at number 2609 C.D. 2015, the Court directs the following: * It appearing that the case at docket number 1230 C.D. 2015 was discontinued on January 7, 2016, the cases at docket numbers 1229 C.D. 2015, 1323 C.D. 2015 and 2609 C.D. 2015 shall be consolidated and the caption shall be as set forth above. * The stay entered in the cases at docket numbers 1229 C.D. 2015 and 1323 C.D. 2015 is vacated. * The Chief Clerk is directed to obtain the certified record for the abovecaptioned actions. * Upon receipt of the certified record, the Chief Clerk shall issue a briefing schedule. * The Delaware Riverkeeper Network, Clean Air Council, David Denk, Jennifer Chomicki and Joann Groman are designated appellants under Pa. R.A.P. 2136. * With regard to the appeals at docket numbers 1229 C.D. 2015 and 1323 C.D. 2015, it appearing that designated appellees seek review of the July 9, 2015 order of the trial court that imposed a stay of Middlesex Township Ordinance No. 127 and "all activity relative to unconventional natural gas development as presently being conducted at 451 Denny Road, Middlesex Township, Butler County, Pennsylvania, pending final adjudication of this proceeding" pursuant to Section 1003-A(d) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, added by the Act of December 21, 1988, P.L. 1329, 53 P.S. §11003-A(d), the parties shall address the appealability of the July 9, 2015 order in their principal briefs on the merits. See Pa. R.A.P. 311; 313; 20 West's Pennsylvania Appellate Practice, §311:48.			
February 3, 2016	Trial Court Record Received Butler County Court of Common Pleas			
February 3, 2016	Briefing Schedule Issued Commonwealth Court Filing Office			
March 9, 2016	Application for Extension of Time to File Jacobs-Smith, Aaron Russell	Clean Air Council	Designated Appellant	
	Document Name: 1st brief ext. request			
March 10, 2016	Order Granting Application for Extension of Time to File Appellant Brief Krimmel, Michael			03/11/2016
	Document Name: Designated Appellants' brief and RR shall be filed by 3-28-16.			
March 17, 2016	Designation of Contents of Reproduced Record Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
March 28, 2016	Designated Appellant's Reproduced Record Filed Yeager, Jordan Berson	Chomicki, Jennifer	Designated Appellant	
	Yeager, Jordan Berson	Clean Air Council	Designated Appellant	
	Yeager, Jordan Berson	Delaware Riverkeeper Network	Designated Appellant	
	Yeager, Jordan Berson	Denk, David	Designated Appellant	
	Yeager, Jordan Berson	Groman, Joann	Designated Appellant	
	Document Name: 4 volumes			

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Filed Date	Docket Entry / Filer	Representing	Participant Type	Exit Date
March 28, 2016	Designated Appellant's Brief Filed			
	Yeager, Jordan Berson	Chomicki, Jennifer	Designated Appellant	
	Yeager, Jordan Berson	Clean Air Council	Designated Appellant	
	Yeager, Jordan Berson	Delaware Riverkeeper Network	Designated Appellant	
	Yeager, Jordan Berson	Denk, David	Designated Appellant	
	Yeager, Jordan Berson	Groman, Joann	Designated Appellant	
March 28, 2016	Application for Relief			
	Delaware Riverkeeper Network		Designated Appellant	
	Clean Air Council		Designated Appellant	
	Denk, David		Designated Appellant	
	Chomicki, Jennifer		Designated Appellant	
	Groman, Joann		Designated Appellant	
	Document Name: Designated Appellant's Unopposed Application to File Overlength Brief			
March 29, 2016	Entry of Appearance			
	Williams, Lauren M.	Chomicki, Jennifer	Designated Appellant	
	Williams, Lauren M.	Delaware Riverkeeper Network	Designated Appellant	
	Williams, Lauren M.	Denk, David	Designated Appellant	
	Williams, Lauren M.	Groman, Joann	Designated Appellant	
April 4, 2016	Order Granting Application for Relief			04/05/2016
	Colins, James G.			
	Document Name: Upon consideration of designated appellants' unopposed application for leave to file overlength			
	Comment: brief, the application is granted and the brief received on March 28, 2016 shall be docketed as designated appellants' principal brief in these matters.			
April 20, 2016	Application for Extension of Time to File Brief - First Request			
	Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
	Craig, Daniel Patrick	R.E. Gas Development, LLC	Designated Appellee	
	Gallagher, Michael D.	Middlesex Township Zoning Hearing	Designated Appellee	
	Gallagher, Sean Michael	Middlesex Township Zoning Hearing	Designated Appellee	
	Hnath, Michael David	Middlesex Township	Designated Appellee	
	Linn, Douglas G., II	Geyer, Robert	Designated Appellee	
April 22, 2016	Order Granting Application for Extension of Time to File			04/25/2016
	Krimmel, Michael			
	Document Name: Designated Appellees' brief shall be filed by 5-12-16.			
May 12, 2016	Designated Appellee's Brief Filed			
	Middlesex Township		Designated Appellee	
May 12, 2016	Designated Appellee's Brief Filed			
	Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
May 12, 2016	Appellee's Supplemental Reproduced Record Filed			
	Colosimo, Kevin L.	R.E. Gas Development, LLC	Designated Appellee	
May 19, 2016	Joinder in Brief			
	Geyer, Robert		Designated Appellee	

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May 19, 2016	No Brief to be Filed Middlesex Township Zoning Hearing Board Document Name: Letter dated 5/19/2016		Designated Appellee	
June 14, 2016	Designated Appellant's Reply Brief Filed Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson Yeager, Jordan Berson	Clean Air Council Delaware Riverkeeper Network Denk, David Chomicki, Jennifer Groman, Joann	Designated Appellant Designated Appellant Designated Appellant Designated Appellant Designated Appellant	
June 24, 2016	Tentative Session Date Krimmel, Michael Document Name: November 2016 (Pittsburgh)			
October 5, 2016	Argument Scheduled Krimmel, Michael Document Name: Notice is hereby given that argument is fixed for Monday, November 14, 2016 at 1:00 p.m. Before a Comment: panel of judges sitting in Courtroom 313, Allegheny County Courthouse, 436 Grant Street, Pittsburgh, PA. Case No. 13-13b			10/05/2016
April 7, 2017	Filed - Other Colosimo, Kevin L. Document Name: Change of Address	R.E. Gas Development, LLC	Designated Appellee	
June 7, 2017	Affirmed Wojcik, Michael H. Document Name: Memorandum Opinion (45 pages) Comment: The order of the Butler County Court of Common Pleas docketed at 2609 CD 2015 is AFFIRMED. The appeals docketed at 1229 & 1323 CD 2015 are dismissed as moot.			06/07/2017
July 10, 2017	Petition for Allowance of Appeal to PA Supreme Court Filed Delaware Riverkeeper Network Clean Air Council Denk, David Groman, Joann Document Name: 270 WAL 2017		Designated Appellant Designated Appellant Designated Appellant Designated Appellant	

SESSION INFORMATION

Journal Number: 13-11-2016
 Consideration Type: Oral Argument - Panel
 Listed/Submitted Date: November 14, 2016

Panel Composition:

The Honorable Patricia A. McCullough	Judge
The Honorable Michael H. Wojcik	Judge
The Honorable Bonnie Brigance Leadbetter	Senior Judge

DISPOSITION INFORMATION

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DISPOSITION INFORMATION

Final Disposition:	Yes	Judgment Date:	
Related Journal No:		Disposition Author:	Wojcik, Michael H.
Category:	Decided	Disposition Date:	June 7, 2017
Disposition:	Affirmed		
Disposition Comment:	The order of the Butler County Court of Common Pleas docketed at 2609 CD 2015 is AFFIRMED. The appeals docketed at 1229 & 1323 CD 2015 are dismissed as moot.		
Dispositional Filing:	Memorandum Opinion	Filing Author:	Wojcik, Michael H.
Filed Date:	6/7/2017 12:00:00AM		
Dispositional Filing:	Concurring Statement	Filing Author:	McCullough, Patricia A.
Filed Date:	6/7/2017 12:00:00AM		

REARGUMENT / RECONSIDERATION / REMITTAL

Filed Date:
Disposition:
Disposition Date:
Record Remittal: October 1, 2015