

Oil and Gas Lease – Murrysville Community Park

Agenda Briefing

January 22, 2014

The Municipality has been approached by a producer requesting that the natural gas rights for the Murrysville Community Park be leased to them. The lease proposed that only the subsurface rights be included and that no surface activities would be conducted in the Park. There are two options available to Council. Council may unilaterally declare it is not interested in a sale or lease of the gas rights and reject the lease or since the Municipality can't enter into exclusive negotiations with a single entity it could choose to solicit competitive bids before granting a lease on the natural gas rights owned by the Municipality.

Although Council has the authority to unilaterally establish an ordinance that allows the competitive bidding of those rights, Council may choose to seek the input of the residents in helping guide an appropriate course of action. If this is the case, Council can consider obtaining a broad consensus of the residents' opinions by seeking authority for a referendum through the County Election Bureau. If authority is granted residents would form a Citizen's Committee to conduct the following:

- Obtain the necessary signatures required to have a referendum question placed on the ballot during the November 2014 general election.
- Assist with educating the citizens on the benefits and negatives of leasing the non-surface natural gas rights beneath the Park
- Develop a "yes/no" question that can be placed on the ballot so residents can express their opinion on whether to develop an ordinance to allow competitive bidding of the non-surface rights.

Council cannot develop the referendum as there is very clear State and Home Rule Charter mandated requirements on how this process must be conducted. The State and Home Rule Charter mandated referendum process includes the following:

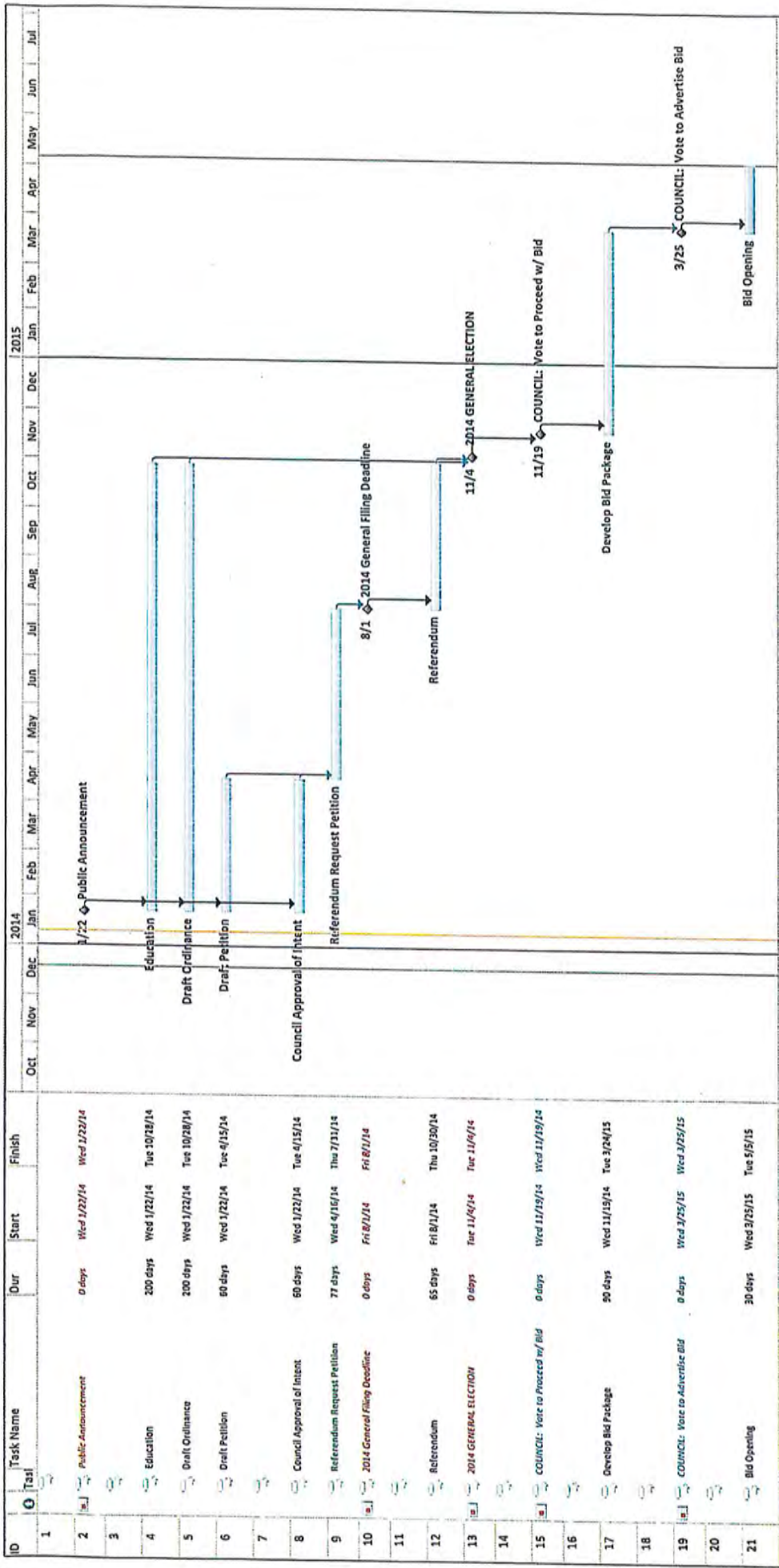
- That a specified percentage of voters sign the referendum petition.
- That the petition be in response to a "legislative action" of Council.
- Dictates stringent deadlines to obtain the signatures and for submittal of the petition.

Council may choose to assist a citizen's group in navigating the referendum process but cannot be the lead in the process.

Attached is a general timeline that depicts a likely referendum process. Notable deadlines associated with this process are that Council would give the residents notice of its intent to develop this ordinance as of 22 January 2014. However, the residents may not begin getting signatures for a petition before 15 April, 2014. The petition would then

be submitted to the County by August 1, 2014 for inclusion on the November ballot. Obviously, the outlined schedule is subject to change and should not be considered "final". In addition, it is stressed that a petition not meeting the exact State mandated requirements will not be accepted by the County for inclusion on the ballot.

Attached is a summary of the requirements for proper preparation and submittal of a referendum question for inclusion on the ballot. In addition, Council could direct Municipal staff and the Municipal Solicitor to be available to assist a citizen's group seeking to lead this process.



Project Summary
 External Tasks
 External Milestone
 Inactive Task
 Project Summary Rollup
 Manual Summary
 Manual Summary
 Start-only
 Finish-only
 Inactive Milestone
 Inactive Summary
 Manual Task
 Duration-only
 Deadline
 Progress

IV. Electoral Procedures Authorized in Home Rule Charters

One of the significant changes brought about by the new local government article of the Pennsylvania Constitution adopted by the voters in 1968 was extending the authorization to adopt their own home rule charters to all counties and municipalities. Since the provision was implemented in 1972, 70 home rule charters have been adopted by the voters of counties and municipalities, in addition to Philadelphia's charter adopted under prior authorization in 1951.

One of the concerns common to most local charter drafters has been increased emphasis on citizen participation in and access to the affairs of the local government. This finds expression in many ways, one of the most striking being charter provisions guaranteeing citizens a role in the ordinance-making power of the jurisdiction through initiative and referendum provisions. Another provision included in some of the home rule charters is recall of elected officials by the voters.

Initiative and Referendum

Many of Pennsylvania's home rule charters authorize direct legislative action by the voters through provisions for initiative and referendum. Of the total of 71 home rule charters, 54 provide for initiative and referendum. Generally, the voters can propose ordinances or require reconsideration of ordinances adopted by a governing body through a petition process. Should the governing body fail to enact a proposed ordinance or repeal a protested adopted ordinance, the issue is then framed into a ballot question and presented to the voters at a referendum. The outcome of voting will determine enactment of the initiated ordinance, either sustaining or nullifying the referred ordinance.

Requirements for the number of signatures and filing dates vary from charter to charter, as do time limits for governing body action after presentation of the petition. Often there are limitations on the initiative and referendum powers. Areas commonly excluded include budget matters, the capital program, emergency ordinances, ordinances levying a special assessment, appropriations, salaries of officers and employees, borrowing and zoning. The number and extent of exclusions varies from charter to charter.

The courts have determined that planning and zoning activities are excluded from the initiative and referendum process in home rule jurisdictions. The Home Rule Law subjects home rule municipalities to the powers and procedures established by the legislature in the Pennsylvania Municipalities Planning Code.¹ The Commonwealth Court invalidated an attempt to use the referendum provisions of the Horsham Township Home Rule Charter to repeal an amendment to the township zoning ordinance, holding the Planning Code requires ordinances to be adopted by the municipal governing body and makes no provision for review of a zoning ordinance referendum.² In a similar case, the Commonwealth Court ruled the initiative provision of the Ferguson Township Home Rule Charter could not be used to amend the township zoning ordinance since the Planning Code vests the power to enact, amend and repeal zoning ordinances in the municipal governing body.³

References

1. 53 Pa.C.S. 2962(a)(10), Home Rule Charter and Optional Plans Law, Section 2962(a)(10).
2. *Horsham Township Council v Mintz*, 395 A.2d 677, 39 Pa.Cmwlth 408, 1978.
3. *Minshall v. Board of Supervisors of Ferguson Township*, 413 A.2d 1165, 50 Pa.Cmwlth. 541, 1980.

Recall

Recall is a method of removing an elected official from office through an electoral process common in other states. The process involves citizen petitions to initiate the question, then placing the question of removal on the ballot for decision by the voters. Recall is usually prohibited during certain portions of an official's terms, usually at the beginning and end of the term. Home rule charters in 38 Pennsylvania jurisdictions provide for recall of elected officials.

In one of the most publicized and controversial cases of its time, the Pennsylvania Supreme Court voided the Philadelphia Home Rule Charter's recall provisions during a heated campaign to recall Mayor Frank L. Rizzo in 1976. The opinion of the court held recall was unconstitutional by violating Article VI, Section 7 of the Pennsylvania Constitution.¹ Because the Constitution says elected officials shall hold office on good behavior, they can only be removed for cause after having been found to be in violation of some law or other rule. The court was highly divided on the issue with the four justices in the majority issuing three separate opinions and the three dissenting justice each issuing their own opinions. A second home rule recall case reached the Pennsylvania Supreme Court in 1995, this time without the complex procedural issues involved in the Rizzo case. A group of citizens in the Municipality of Kingston, using provisions in the home rule charter, attempted to recall Mayor Gary Reese. This time, in a unanimous decision, the court declared the recall provisions in the Kingston Home Rule Charter unconstitutional.² The court determined the recall provisions conflicted with the Pennsylvania Constitution's provision for removal of civil officers and exceeded the powers conferred by the Home Rule Charter and Optional Plans Law.

References

1. *Citizens Committee to Recall Rizzo v. Board of Elections of the City and County of Philadelphia*, 367 A.2d 232, 470 Pa. 1, at 25, 1976; Jefferson B. Fordham, "Judicial Nullification of a Democratic Political Process - The Rizzo Recall Case," *University of Pennsylvania Law Review*, Vol. 126, 1977, p.1.
2. *In re Petition to Recall Reese*, 665 A.2d 1162, Pa., 1995.

Occurrence of Home Rule Electoral Procedures

Of the state's 71 home rule charters, 38 or 54% include recall provisions and 54 or 76% include initiative and referendum provisions. Below is a list of those charters with initiative and referendum recall or both. In addition those listed, three charters have limited procedures. Two have limited initiative. In Bryn Athyn and Warren voters can place issues on the agenda of the governing body, but have no recourse to the ballot. Delaware County has limited referendum. The council can place issues on the ballot for referendum, but there is no provision for citizens to initiate referenda through a petition process.

V. Advisory Questions

Highly publicized referenda in other states in recent years led to citizen demands to allow certain locally controversial measures to be determined by the voters. This pressure ran afoul of Pennsylvania's system of heavily emphasized representative government. Pennsylvania courts have traditionally reinforced the role of elected officials to make decisions in public matters and minimized the role of the voters even where direct action is authorized by statute.¹

Confronted by the general lack of statutory authorization for local referenda, the use of nonbinding advisory questions had developed as an electoral practice in Pennsylvania to determine popular sentiment on particular local matters. Advisory questions were not authorized by law. Provisions authorizing binding referenda on numerous issues appear in many different state statutes. On the other hand, the practice of placing advisory questions on the ballot was completely extralegal in character. No law authorized their use. The practice had gone relatively unchallenged for many years. The issue was not squarely addressed by a statewide appellate court until 1990.

The status of advisory questions is now clear. Three recent appellate court decisions have ended the practice of placing nonbinding advisory questions on the ballot in Pennsylvania.

The issue of the legality of an advisory question was addressed directly by an appellate court for the first time in 1990. The Lancaster County Election Board had placed on the ballot an advisory question on the building of a new high school in the Hempfield School District. The county court rejected the school districts's request for an injunction and the district appealed.

Commonwealth Court reversed and granted the injunction.² The court ruled that the Election Code does not give county election boards the discretion to place nonbinding referenda questions on the ballot. The court found that the Public School Code determines how the school board is to obtain public review of issues involving school construction. The action of the election board in placing the advisory question on the ballot violated this section of the School Code. The court stated the election board had no legal authority for its decision to place the nonbinding question on the ballot. The county asked the Pennsylvania Supreme Court to review the case, but this request was denied.

The issue of advisory questions was again brought before the Commonwealth Court in 1991. The Schuylkill County Board of Elections had placed an advisory question on the ballot concerning a plan to build a soil remediation facility in Blythe Township. The township and the operator of the proposed facility asked the county court to remove the issue from the ballot. The county court followed the precedent established in the *Hempfield* decision and ordered the issue off the ballot. Schuylkill County subsequently appealed to Commonwealth Court. The court affirmed the decision of the county court citing its earlier ruling in *Hempfield*.³ The court clearly stated the county lacks authority to place a nonbinding referendum on the ballot absent specific statutory authority for such a referendum. The court noted representative government and the legislative process demand such a result.

The issue of advisory questions was brought before Commonwealth Court for a third time in an unreported 1994 case. A group of taxpayers in the York Suburban School District sought ballot access for a nonbinding referendum on a three-year school tax freeze. The decision of the board of elections to reject the request was upheld by the court of common pleas. On appeal, the Commonwealth Court ruled that neither the Election Code nor any other statute provides any authority for placing nonbinding referendum questions before the voters.⁴ The Court stated that any access to the ballot had to be approved by the legislature. Requests to review the case were denied both by the Pennsylvania and U.S. Supreme Courts.

These decisions squarely address the issue of advisory questions. The court has determined such questions are illegal in Pennsylvania. A county board of elections is without power to place nonbinding advisory questions on the ballot.

References

1. *Williams v. Rowe*, 283 A.2d 881, 3 Pa.Cmwth. 537, at 544, 1971.
2. *Hempfield School District v. Election Board of Lancaster County*, 574 A.2d 1190, 133 Pa.Cmwth. 85, 1990.
3. *Board of Elections of Schuylkill County v. Blythe Township*, 600 A.2d 331, 143 Pa.Cmwth. 539, 1991.
4. *Bulette et al. v. Trout et al.*, Commonwealth Court, No. 833, C.D. 1994, April 26, 1994.

Chapter C. CHARTER

Article XX. Initiative and Referendum

§ C-128. General authority.

Only matters of legislation may be subjected to initiative and referendum.

A. Initiative.

- (1) The qualified electors of the Municipality shall have the power to propose ordinances to Council by an initiative petition in accordance with the procedures set forth herein. Should Council fail to adopt the proposed ordinance, without any change in substance, the proposed ordinance shall be placed on the ballot at a regular or special election, as provided herein, for adoption or rejection by the voters of the Municipality.
- (2) No proposed initiative ordinance shall contain more than one subject, which shall be clearly expressed in its title.
- (3) The power of initiative shall not extend to the budget, or capital program, or any ordinance relating to appropriation of money, zoning, levy of taxes, or salaries of officials or employees of the Municipality, or to any matter which Council itself is prohibited from legislating upon.

B. Referendum.

- (1) The qualified electors of the Municipality shall have the power to require Council to reconsider any ordinance, or part thereof, in accordance with the procedures set forth herein. Should Council fail to repeal an ordinance, or part thereof, so reconsidered, the ordinance, or part thereof, shall be placed on the ballot at a regular or special election as provided herein, for adoption or rejection by the voters of the Municipality.
- (2) The power to require reconsideration shall not extend to the budget, or capital program, any emergency ordinance, zoning or any ordinance relating to the appropriation of money, or salaries of officials and employees of the Municipality.

§ C-129. Petitioners' committee.

Any qualified elector(s) may begin initiative or referendum proceedings by filing with the Municipal Secretary an affidavit stating that said elector(s) will constitute the petitioners' committee, stating name(s) and address(es) and the address to which all notices to the

committee are to be sent. The affidavit shall also include the full text of the proposed ordinance or cite the ordinance, or part thereof, sought to be reconsidered. The petitioners' committee shall be responsible for circulating the petition and for filing it in proper form within the 45 days after filing the committee's affidavit, except in the case of a referendum petition which must be filed within 45 days after adoption by Council of the ordinance, or part thereof, sought to be reconsidered. Upon the filing of the committee's affidavit, the Municipal Secretary shall issue the appropriate petition blanks if so requested by the petitioners' committee.

§ C-130. Petitions.

- A. Initiative and referendum petitions must be signed by qualified electors of the Municipality equal in number to 20% of the registered electors of the Municipality at the time of the most recent general or municipal election.
- B. All papers of a petition shall be uniform in size and style and shall be assembled as one instrument for filing. Each signature must be executed in ink and must be followed by the address and the municipality of the person signing and the date of the signing. The full text of the ordinance, or part thereof, proposed or sought to be reconsidered must be contained within or attached to each paper of the petition throughout its circulation.
- C. Each paper of the petition shall have attached to it when it is filed an affidavit of the circulator which states that the circulator personally circulated the paper, the number of signatures it contains, that all signatures were affixed in the circulator's presence, that the circulator believes them to be the genuine signatures of the persons whose names they purport to be, and that each signer had an opportunity to read the full text attached before signing the petition.

§ C-131. Certification of petitions.

Within 20 days after the petition is filed, the Municipal Secretary shall certify its sufficiency specifying in exactly which ways, if any, it is deficient and shall immediately send a copy of the certificate to the petitioners' committee by registered mail. A petition certified insufficient for lack of the required number of valid signatures may be supplemented by an additional petition which shall be filed within five days after receipt of the certificate. The supplemental petition shall comply with all the requirements of § C-130 herein. The Municipal Secretary shall certify the original and supplemental petition which shall be treated as one within five days after the supplemental petition is filed and shall notify the petitioners' committee in the same manner as previously set forth in this section. Should the petitioners' committee be dissatisfied with the certification of the Municipal Secretary, it may, within five days of receipt of the certification, file a written request to Council to review the certification. Council shall review the certification and approve or disapprove it at its next regular meeting.

§ C-132. Suspension of ordinance's effect.

When a referendum petition is filed with the Municipal Secretary, the ordinance, or part thereof, sought to be reconsidered shall be suspended from taking or continuing in effect. The suspension shall end when:

- A. There is a final determination of the insufficiency of the petition;

- B. The petitioners' committee withdraws the petition;
- C. Council repeals the ordinance, or part thereof; or
- D. The Board of Elections certifies the election results.

§ C-133. Action by Council.

When any initiative or referendum petition has been finally determined sufficient, the governing body shall promptly consider the proposed initiative ordinance, in the same manner as other ordinances, or reconsider the ordinance, or part thereof, cited in the referendum petition. Should Council fail to adopt the proposed initiative ordinance without any change in substance within 30 days after the date the petition was finally certified as being sufficient, or fail to repeal the ordinance, or part thereof, cited in the referendum petition within 30 days after the date the petition was finally certified as being sufficient, Council shall cause the proposed or cited ordinance, or part thereof, to be submitted to the voters of the Municipality.

§ C-134. Submission to voters.

The vote of the Municipality on a proposed or cited ordinance, or part thereof, shall be at the first regular or special election at which the question can be placed on the ballot in accordance with the election laws of the Commonwealth of Pennsylvania. Copies of the proposed or cited ordinance, or part thereof, shall be made available by Council to the public at least 10 days before the scheduled election and at the polls.

§ C-135. Withdrawal of petition.

An initiative or referendum petition may be withdrawn by the written request of the majority of the petitioners' committee at any time prior to the deadline set by the Board of Elections for the removal of such questions from the ballot. Should a petition be withdrawn, all proceedings thereunder shall be terminated.

§ C-136. Election results.

- A. If a majority of the votes cast on the question are in favor of the proposed initiative ordinance, the ordinance shall be considered adopted upon certification of the election results and shall be treated in all respects in the same manner as those ordinances adopted by Council pursuant to this Charter.
- B. If a majority of the votes cast on the question are in favor of repeal of the ordinance, or part thereof, cited in the referendum petition, the ordinance, or part thereof, shall be considered repealed upon certification of the election results.
- C. The Mayor shall have no veto power in connection with initiative or referendum.

§ C-137. Repeal of initiative ordinance.

Any initiative ordinance approved by the voters may not be amended or repealed by Council for two years from its adoption.

§ C-138. Rejected initiative ordinance.

Should any initiative ordinance be rejected by the voters, such ordinance may not again be submitted to the voters within two years of the date of rejection.

§ C-139. Conflicting items for referendum.

If conflicting ordinances, or parts thereof, are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.