



Joint Landowners Coalition of New York, Inc.

To foster, promote, advance and protect the common interest of the people as it pertains to natural gas development through education and best environmental practices.

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Binghamton Moratorium Invalidated

On October 2, 2012, Broome County Supreme Court Justice Ferris D. Lebous invalidated the City of Binghamton's two-year moratorium on natural gas development in the case of **Jeffrey v. City of Binghamton**. The case demonstrates that municipal moratoriums and bans can be successfully challenged in court. It serves as a sharp rejection of the efforts of David and Helen Slottje of the Community Environmental Defense Council, Inc. who have lead towns to believe that natural gas bans and moratoriums are legally acceptable.

Moratorium or bans must be premised on a valid public purpose and may not impose a disproportionate burden on only a segment of a town's population. The decision calls into question the moratoriums and bans passed by many towns in New York.

Judge Lebous stated in his decision:

“However, the City cannot just invoke its police power solely as a means to satisfy certain segments of the community. Rather, the City must satisfy the well established legal requirements that show a dire emergency; that the moratorium is reasonably calculated to alleviate a crisis; and that they are taking steps to solve the problem.” He goes on to say: “In this case, there is no other conclusion that the Court can reach, however, that the Local Law 11-006, fails to meet the criteria for a properly enacted moratorium.”

In addition, on October 15, 2012, the records on appeal and briefs were filed in the cases of **Cooperstown Holstein Corporation vs. Town of Middlefield** and **Anschutz Exploration Corporation vs. Town of Dryden**. The New York State Appellate Division Third Department will soon resolve the question of whether a ban on gas drilling is preempted by Environmental Conservation Law § 23-0303(2) which states:

“The provisions of this article shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the real property tax law.”

All New York towns are urged to examine these cases and the law carefully before making any decisions affecting natural gas development. Please visit our website at www.jlcny.org for a complete copy of the **Jeffrey v. City of Binghamton** decision.