

Phone: (215) 569-5793
Fax: (215) 832-5793
Email: Lewis@BlankRome.com

February 24, 2017

BY EMAIL & U.S. MAIL

Kristin S. Camp
Buckley, Brion, McGuire & Morris LLP
118 W. Market Street, Suite 300
West Chester, PA 19382-2928

**Re: West Goshen Township -- Sunoco Logistics Partners L.P.
ME2 Pipeline Project -- Proposed 20-inch Remote Operated Valve
Located on Boot Road**

Dear Ms. Camp,

I am writing to respond to your letter to Sunoco Logistics Partners L.P. (“Sunoco”) dated February 9, 2017 (the “Letter”). In your Letter, you state that, “pursuant to the West Goshen Township Zoning Ordinance,” Sunoco is not permitted to install an above-ground remotely operated valve. You contend that the proposed valve falls under the definition of a “Gas and Liquid Pipeline Facility,” and such a facility is not permitted in the Township’s R-3 Residential Zoning District.

Please be advised that Sunoco Pipeline L.P. (“SPLP”) is a public utility, and the proposed valve will be a component of the public utility service provided by SPLP on its Mariner East 2 (“ME-2”) pipeline. Under well-settled law, West Goshen Township is preempted from applying its zoning ordinance to this public utility facility.

In Pennsylvania, municipalities are completely preempted from regulating non-building, public-utility property. *See S. Coventry Twp. v. Philadelphia Elec. Co.*, 504 A.2d 368, 371 (Pa. Commw. Ct. 1986) (“*Duquesne Light* establishes as an *enduring* principle that there is *no power* possessed by municipalities to zone with respect to utility structures other than buildings-and then, of course, only *after* the PUC has reached a determination with respect to the public convenience need for the building.” (emphasis in original)); *see also Heintzel v. Zoning Hearing Bd. of Millcreek Twp.*, 533 A.2d 832, 833 (Pa. Commw. Ct. 1987) (“In the instant case, the City, acting as a public utility, plans to construct a structure other than a building. According to our

Kristin S. Camp, Esquire
February 24, 2017
Page 2

holding in *South Coventry Township*, the structure, therefore, is exempt from local zoning regulation.”).

The Pennsylvania Supreme Court has long held that preemption is necessary to prevent municipalities from placing local interests ahead of the interests of the entire Commonwealth. *See Chester Cty. v. Philadelphia Elec. Co.*, 218 A.2d 331, 333 (Pa. 1966) (“If each county were to pronounce its own regulation and control over . . . oil lines, the conveyors of . . . fuel could become so twisted and knotted as to affect adversely the welfare of the entire state.”); *Duquesne Light Co. v. Upper St. Clair Twp.*, 105 A.2d 287, 293 (Pa. 1954) (noting that local authorities “are ill-equipped to comprehend the needs of the public beyond their jurisdiction”). Accordingly, “[t]he voluntary expansion or extension of [public-utility] facilities lies in the discretion of company management,” not municipalities. *Duquesne Light Co.*, 105 A.2d at 293.

The case law cited above makes clear that the West Goshen Township Zoning Ordinance you rely on in your Letter is preempted as applied to SPLP. SPLP is a public utility subject to the Public Utility Code. *See In re Sunoco Pipeline, L.P.*, 143 A.3d 1000, 1020 (Pa. Commw. Ct. 2016) (“We further conclude that Sunoco is regulated as a public utility by PUC and is a public utility corporation, and Mariner East intrastate service is a public utility service rendered by Sunoco . . .”). According to your own Letter and the Ordinance you cite therein, the valve at issue is a “Gas and Liquid Pipeline Facility.” *See also* 66 Pa. Cons. Stat. § 102 (defining public utility “facilities” as “[a]ll the plant and equipment of a public utility”). Further, the valve is not associated with any SPLP building. Consequently, West Goshen Township is preempted entirely from regulating the location of the valve. *See S. Coventry Twp.*, 504 A.2d at 371.

Given the existence of this well-settled law, any effort by West Goshen Township to apply its zoning ordinance to the valve is meritless and appears to be motivated by an improper purpose, specifically, harassing SPLP and causing unnecessary delay to the ME-2 project. We respectfully remind you that, in addition to those remedies that may exist via administrative proceedings, SPLP may avail itself of all legal options available to preserve its rights. Such legal options include filing a § 1983 action to protect SPLP’s rights to equal protection under the law and due process, and seeking attorneys’ fees in connection therewith. *See Am. Marine Rail NJ, LLC v. City of Bayonne*, 289 F. Supp. 2d 569, 584 (D.N.J. 2003) (upholding § 1983 action where entity alleged that municipality violated entity’s substantive due process rights); *Assocs. In Obstetrics & Gynecology v. Upper Merion Twp.*, 270 F. Supp. 2d 633, 655-56 (E.D. Pa. 2003) (upholding § 1983 action based on Township’s selective enforcement of zoning ordinances); *see also RHJ Medical Ctr., Inc. v. City of DuBois*, 754 F. Supp. 2d 723, 763 (W.D. Pa. 2010) (“For three decades, the Supreme Court has held that municipalities do not have immunity from suits

Kristin S. Camp, Esquire
February 24, 2017
Page 3

stemming from 42 U.S.C. § 1983.”).

Please confirm that your client will not interfere with SPLP’s right to proceed with its placement of the valve, as depicted on the Tetra Tech plan dated March 26, 2015, last revised September 30, 2016.

Please feel free to contact me should you have any questions or concerns regarding this letter.

Very truly yours,

Christopher A. Lewis

Christopher A. Lewis
Partner

CAL:

cc: David Brooman, Esquire