

Tuesday, July 7, 2009

Court says NO to Eminent Domain for The Brandywine 5 & Chester County

The Honorable Judge Timothy J. Savage presided over condemnation proceedings initiated by Transcontinental Gas Pipeline's (Williams Transco) in an effort to obtain possession of 6 tracts of land by eminent domain. To date, construction on these tracts is prohibited by a PA DEP April 2009 Permit restriction of this 2,600 feet within the Brandywine Creek and Ludwig's Run watersheds.

Judge Savage dubbed the five residents of the watersheds: "The Brandywine 5" and soon coupled "Chester County" with the group when it became apparent that all shared a common goal of watershed protection. Chester County represents the interests of The Struble Hiking and Bike Trail along the East Branch of the Brandywine Creek and was prepared to present testimony from The Chester County Water Authority in support of requiring HDD (horizontal direct drill) of these watersheds.

Counsels Carolyn Elephant, Esq. for "The Brandywine 5" and Thomas Whitemar, Esq. for Chester County, noted that prior to any construction the FERC process requires state regulatory agency permits (PA DEP) and subsequent review and approval by FERC with a notice to proceed (NTP). In the current absence of either a final Permit or NTP, possession was described as premature, inappropriate and potentially harmful to the defendants.

The court did not grant possession under eminent domain.

With Counsel at their helm "The Brandywine 5" and Chester County crafted an agreement with Transcontinental Gas Pipeline which grants restricted access to survey and stake the lands. Judge Savage approved the agreement and will maintain strict oversight for the duration of the agreement.