

# **Bond Case Briefs**

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## **CONVEYANCE - PENNSYLVANIA**

### **In re Borough of Downingtown**

**Supreme Court of Pennsylvania - June 20, 2017 - A.3d - 2017 WL 2645399**

Borough residents and business brought separate actions against borough for declaratory and injunctive relief, seeking to prohibit the sale of park property to developers, and borough petitioned to approve the sale.

After the matters were consolidated and developers were granted leave to intervene, the Court of Common Pleas determined that borough lacked authority to sell and the Commonwealth Court reversed in part and vacated in part. On remand, after consolidation with another petition filed by borough that was appealed and remanded, the Court of Common Pleas concluded that the Court's approval was required to sell the southern parcels, a change in statute authorized borough to dispose of the northern parcels, and easements granted to developers were permissible. All parties filed cross-appeals. The Commonwealth Court affirmed. All parties' petitions for allowance of appeal were granted.

The Supreme Court of Pennsylvania held that:

- Provision of Eminent Domain Code did not apply to question of borough's right to dispose of southern parcels;
- Borough was required to obtain court approval before selling northern parcels;
- The Donated or Dedicated Property Act (DDPA) covers property which is purchased with funds from the Project 70 Land Acquisition and Borrowing Act; and
- Borough was required to obtain court approval before granting easements to developers.

Provision of most recent Eminent Domain Code relating to abandonment of project did not apply to question of borough's right to dispose of southern parcels of park property, even though borough acquired title to those parcels via condemnation, where condemnations were effected when borough filed declarations of taking, which was before Code took effect.

Northern parcels of public park were dedicated to public use as public facility, and therefore borough was required to obtain orphans' court approval under Donated or Dedicated Property Act (DDPA) before selling parcels, despite legislature's release of parcels from some restrictions under Project 70 Land Acquisition and Borrowing Act. Parcels were integral part of park, borough committed parcels to public use via ceremony and via maintenance and improvements over two decades, and public accepted land for use as park.

A municipality that purchases property with monies under the Project 70 Land Acquisition and Borrowing Act, which is thereafter dedicated to a public use as a public facility, must, in order to convey that property, seek the General Assembly's release of the Project 70 Act restrictions imposed in the deed of acquisition, and must also seek orphans' court approval under the Donated or Dedicated Property Act (DDPA) for the conveyance.

Borough was required to obtain orphans' court approval under Donated or Dedicated Property Act

(DDPA) in order to grant developers stormwater, utility, and maintenance easements on public park property; even though easements did not occupy entire area of parcels, conveyance of easements would allow developers to use portions of dedicated parcels for private purpose of constructing and maintaining private housing development, and easements would have subordinated public rights to private rights of developers.