
EMINENT DOMAIN - PENNSYLVANIA

In re Condemnation of Property in Rem Identified as Tax Parcel Number 62-00-02014-00-3 in Township of Upper Salford Montgomery County

Commonwealth Court of Pennsylvania - February 4, 2025 - A.3d - 2025 WL 376235

Township filed declaration of taking to acquire title to property.

The Court of Common Pleas overruled preliminary objections raised by property owners and intervenors, who were potential purchasers, arguing that purpose of taking was to preserve open space, and, therefore, beyond township's authority. Property owners and intervenors appealed.

The Commonwealth Court held that:

- Substantial evidence supported Court of Common Pleas' determination that taking was for a recreational purpose, and
- Declaration's statement that one purpose was to preserve open space did not render the taking per se unlawful.

Substantial evidence supported trial court's determination that township's taking of property was for a recreational purpose, rather than to conserve open space or prevent development, and, thus, was within township's authority, as part of judgment denying preliminary objections to declaration of taking; township supervisor sent email to property owners over a year before declaration was filed, expressing that township was interested in acquiring property and including it in township's park and trail system, declaration was filed 14 years after property owners filed preliminary residential development plan, and grant applications regarding the land stated that acquisition would conserve open space but also that funding would allow expansion of trails, greenways, natural areas, and parks.

Township's taking of property was not per se unlawful based on fact that one of the stated purposes, as expressed in declaration of taking, was to preserve open space, even though only counties had authority to condemn for such purpose, pursuant to Open Space Lands Act; evidence showed that property was adjacent to or within area of importance and significance for nature conservation and would provide parks and active and passive recreational opportunities for township residents, wording of declaration did not defeat the fundamental recreational purpose for which land was condemned, and land conservation was inevitable in any passive recreational use, which was a public purpose expressly authorized by Township Code.

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