

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

New Morgan Borough, Berks County,	:	
	:	
Appellant	:	
	:	
v.	:	No. 686 C.D. 2011
	:	
Berks County Board of Assessment Appeals and Twin Valley Area School District	:	Argued: October 18, 2011
	:	

BEFORE: HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: November 21, 2011

New Morgan Borough, Berks County (Borough) appeals from an order of the Court of Common Pleas of Berks County (trial court), which affirmed the decision of the Berks County Board of Assessment Appeals (Board) denying the Borough's request for property tax exemption. We affirm.

The Borough owns a 496.14 acre tract of undeveloped land identified as Tax Parcel Number 56-5311-01-49-6715 (the Property). The Borough dedicated the entire Property to be used exclusively as a public park by Borough Ordinance No. 2010-3, enacted September 14, 2010, and Borough Ordinance No. 2010-6, enacted December 14, 2010.

In August 2010, the Borough filed an appeal with the Board seeking tax exemption for the Property. Following a hearing, the Board denied the requested tax exception by notice dated October 28, 2010. On November 23, 2010, the Borough filed a timely appeal with the trial court. A hearing was held on March 10, 2011. Twin Valley School District (School District) intervened.

Based upon the testimony and evidence presented, the trial court found that few members of the general public are aware of the existence or location of the park. The trial court cited lack of promotion, lack of signage indicating availability of the land to the public, the presence of “no trespassing signs” on the Property, only one access point not readily visible from the road, an unpaved, stone parking lot that can only accommodate 10 vehicles, and lack of evidence that anyone, other than Borough officials, have used the land. The trial court opined that the “[d]edication of land results when a landowner offers property for public use and it is accepted by or in behalf of the public.” Trial Court Op., March 21, 2011, at 10 (quoting Coffin v. Old Orchard Development Corporation, 408 Pa. 487, 491-92, 186 A.2d 906, 909 (1962)). Despite efforts made by the Board to dedicate the Property for public use, the trial court concluded the dedication has not vested because there has been no acceptance on the part of the public to make it binding. By decision and order dated March 21, 2011, the trial court affirmed the decision of the Board. This appeal now follows.¹ The Borough presents the following issues for our review:

¹ In a tax assessment appeal, our scope of review is limited to determining whether the trial court abused its discretion or committed an error of law or whether its decision is supported by substantial evidence. ENF Family Partnership v. Erie County Board of Assessment Appeals, 861 A.2d 438 (Pa. Cmwlth. 2004), petition for allowance of appeal denied, 584 Pa. 681, 880 A.2d 1241 (2005). A property owner's entitlement to tax exemption is a mixed question of fact and law and absent an abuse of discretion or a lack of supporting evidence, this Court will not disturb the trial court's decision. Lyons v. City of Philadelphia Board of Revision of Taxes, 828 A.2d 485

(Continued....)

1. Whether the trial court abused its discretion or committed an error of law by affirming the Board's decision to deny the Borough's request for tax exemption pursuant to Section 204(a)(7) of The General County Assessment Law² for real property owned by the Borough and dedicated for recreational purposes as a public park.
2. Whether the trial court abused its discretion or committed an error of law by failing to find that real property owned by the Borough dedicated for public park use is tax exempt pursuant to the Pennsylvania Constitution, Article VIII, Sections 1 and 2(a)(iii).³

(Pa. Cmwlth. 2003).

² Act of May 22, 1933, P.L. 853, as amended, 72 P.S. §5020-204(a)(7), which provides:

(a) The following property shall be exempt from all county, city, borough, town, township, road, poor and school tax, to wit:

* * *

(7) All other public property used for public purposes, with the ground thereto annexed and necessary for the occupancy and enjoyment of the same, but this shall not be construed to include property otherwise taxable which is owned or held by an agency of the Government of the United States nor shall this act or any other act be construed to exempt from taxation any privilege, act or transaction conducted upon public property by persons or entities which would be taxable if conducted upon nonpublic property regardless of the purpose or purposes for which such activity occurs, even if conducted as agent for or lessee of any public authority.

³ Article VIII, Section 1 of the Pennsylvania Constitution provides:

Uniformity of Taxation

All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

Pa. Const. Art. VIII, §1.

Article VIII, Section 2 of the Pennsylvania Constitution provides:

Exemptions and Special Provisions

(a) The General Assembly may by law exempt from taxation:

* * *

(Continued....)

We conclude that the trial court thoroughly and correctly analyzed these issues and that this matter was ably disposed of in the comprehensive and well-reasoned opinion of the Honorable Scott E. Lash. Accordingly, we affirm on the basis of Judge Lash's opinion in New Morgan Borough, Berks County v. Berks County Board of Assessment Appeals (No. 10-22042, filed March 21, 2011).

JAMES R. KELLEY, Senior Judge

(iii) That portion of public property which is actually and regularly used for public purposes.

Pa. Const. Art. VIII, §2.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

New Morgan Borough, Berks	:	
County,	:	
	:	
Appellant	:	
	:	
v.	:	No. 686 C.D. 2011
	:	
Berks County Board of Assessment	:	
Appeals and Twin Valley Area	:	
School District	:	

ORDER

AND NOW, this 21st day of November, 2011, the order of the Court of Common Pleas of Berks County, at No. 10-22042, dated March 21, 2011, is AFFIRMED.

JAMES R. KELLEY, Senior Judge