

**[J-130-2006]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

MIDDLETOWN TOWNSHIP	:	No. 64 MAP 2006
	:	
v.	:	Appeal from the Order of the
	:	Commonwealth Court entered September
THE LANDS OF JOSEF SEEGAR	:	15, 2005, at No. 2152 CD 2004, which
STONE, EXECUTOR OF THE ESTATE	:	affirmed the Order of the Court of
OF SARA SEEGAR STONE, DECEASED,	:	Common Pleas of Bucks County entered
JOSEF SEEGAR STONE AND	:	September 28, 2004, at Nos. 2000-6119-
FRANCINE LIDA STONE, EXECUTORS	:	25-6 and TPM22-005-007.
OF THE ESTATE OF EZRA C. STONE,	:	
A/K/A EZRA STONE, DECEASED, AND	:	
JOSEF S. STONE AND FRANCINE LIDA	:	882 A.2d 1066 (Pa. Cmwlth. 2005)
STONE	:	
	:	
APPEAL OF: JOSEF SEEGAR STONE	:	ARGUED: October 17, 2006

**DISSENTING OPINION**

**MR. JUSTICE EAKIN**

**DECIDED: December 27, 2007**

Relying on the Township’s Recreation, Parks, and Open Space Plan and the depositions of former members of the Township’s Board of Supervisors, the trial court found the record revealed the ultimate goal for the Farm was recreational in nature, stating, “the condemnation purpose was in fact for recreation uses ....” Trial Court Opinion, 12/3/04, at 5. On appeal, the Commonwealth Court concluded, “The evidence supports the finding that the Township condemned the Property for recreational uses. In particular, two witnesses testified to a use of the Property as an extension of an existing, adjacent public park. Also, use of the Property for future recreational purposes was part of an established long-term plan.” Middletown Township v. Lands of Stone, 882 A.2d 1066, 1072 (Pa. Cmwlth. 2005).

Using our proper standard and scope of review,<sup>1</sup> the above facts are more than sufficient to support the trial court's factual and legal conclusion that the central and defining purpose of the condemnation was recreational. Whether this Court, having heard none of the witnesses, believes the Township's declaration of taking was a ploy to carry out the prevention of development is irrelevant; the only relevant inquiry is whether the record supports the trial court's conclusion. I must respectfully disagree with the majority's determination that appellant met his heavy burden of establishing the Township was not authorized under the Second Class Township Code to exercise eminent domain under the circumstances presented. See In re Condemnation by School District of Pittsburgh, at 46 (condemnees' burden of proving abuse of discretion is heavy one).

I would affirm the Commonwealth Court's decision upholding the trial court's order dismissing appellant's preliminary objections.

---

<sup>1</sup> The majority properly states that in reviewing a trial court's decision regarding preliminary objections to a declaration of taking, an appellate court's standard of review is limited to determining whether the trial court abused its discretion. Majority Slip Op., at 5 n.3 (citing Denes v. Pennsylvania Turnpike Commission, 689 A.2d 219, 222 (Pa. 1997)). It is not for an appellate court to determine whether it would have reached the same conclusions as the trial court; if the court's findings are supported by the record, they should not be disturbed. Denes, at 222; In re Condemnation by Township of Heidelberg, 428 A.2d 282, 284-85 (Pa. Cmwlth. 1981). In addition, a condemnee's burden of proving the trial court committed an abuse of discretion in dismissing his challenge to a condemnation is a heavy one. In re Condemnation by School District of Pittsburgh, 244 A.2d 42, 46 (Pa. 1968).