

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. :
 :
 Ann C. Good :
 Paul David Helsel :
 Karen E. Cook :
 :
 Appeal of: Paul David Helsel and : No. 1212 C.D. 2007
 Karen E. Cook : Argued: September 8, 2008

BEFORE: HONORABLE BERNARD L. MCGINLEY, Judge
 HONORABLE JOHNNY J. BUTLER, Judge
 HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
 JUDGE BUTLER**

FILED: October 9, 2008

Paul David Helsel and Karen E. Cook (Condemnees) appeal from an order of the Court of Common Pleas of Lycoming County denying Condemnees’ preliminary objections to the Declaration of Taking filed by the Commonwealth of Pennsylvania, Department of Transportation (PennDOT). We now affirm.

Condemnees own 162.08 acres of vacant land in Lycoming County, Pennsylvania. PennDOT filed a Declaration of Taking on March 7, 2007, which condemned 39.51 acres of their property permanently, and 2.88 acres temporarily. The purpose of the taking was to “acquire property for transportation purposes” and to “acquire property for private access in order to mitigate adverse affects on

other land adversely affected by its proximity to the project.” Specifically, the taking was for improvements to State Route 0015, a limited access highway.

The condemnation eliminates all access points to 34.9 acres of Condemnees’ land, with the exception of an easement 20 feet in width in some portions and 50 feet in width in others, that traverses over other properties to connect to Edwards Road. The Declaration of Taking made no provisions for development, maintenance, upkeep, and/or snow plowing of the proposed easement.

Condemnees filed preliminary objections to the Declaration of Taking alleging, among other things, that the condemnation was arbitrary and capricious in its failure to provide an access easement in conformity with the requirements of Lycoming County’s Subdivision and Land Development Ordinance. PennDOT filed a motion to dismiss the preliminary objections, a motion for prompt determination, and an answer to preliminary objections. The parties reconvened for a hearing on May 29, 2007, wherein the parties stipulated to the facts in the Declaration of Taking and Condemnees waived all challenges to the Declaration of Taking except that the taking was arbitrary and capricious.

The trial court entered an order on May 30, 2007, denying the preliminary objections. Condemnees appealed the order to this Court and the trial court filed a two sentence opinion stating “the [C]ondemnee[s] can without question be adequately compensated monetarily. Thus, Preliminary Objections fail as a matter of law.”

On appeal, Condemnees argue the preliminary objections aver the Declaration of Taking is defective and should be dismissed.¹ Condemnees

¹ Where a trial court has either sustained or overruled preliminary objections to a Declaration of Taking, this Court's scope of review is limited to determining whether the trial

specifically contend they were seeking to invalidate the Declaration of Taking on the basis that the governmental entity abused its discretion, thus this issue can not be dealt with through a claim for compensation. We disagree.²

Condemnees' preliminary objections aver the grant of an easement only 20 feet wide prohibits Condemnees from making use of their remaining acreage by way of further subdivision. Condemnees claim that the 20 foot easement is in violation of Lycoming County's Subdivision and Land Development Ordinance which requires 50 foot widths, and that the land is rendered "useless" and essentially "landlocked."

The fact that this condemnation may ultimately impact upon the use or value of the parcel is not properly raised in preliminary objections to the instant Declaration of Taking under Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306. *In Re County of Allegheny*, 861 A.2d 387 (Pa. Cmwlth. 2004). A claim relating to the use or value of the property is properly raised in a petition for the appointment of a board of viewers, filed pursuant to Section 502 of the Eminent Domain Code, 26 Pa.C.S. §502. *Id.* At the hearing before the trial court, the parties specifically stipulated:

all issues relative to damages that could flow from the configuration of the access road including the ability to offer into evidence and testimony matters related to any local subdivision ordinance . . . are preserved without

court abused its discretion or committed an error of law. *In re Condemnation by City of Coatesville of Certain Props.*, 822 A.2d 846 (Pa. Cmwlth. 2003).

² Condemnees also argue the condemnation was arbitrary and capricious in its failure to provide an access easement in conformity with the requirements of Lycoming County's Subdivision and Land Development Ordinance, and in its failure to provide for development, maintenance, upkeep, and/or snow plowing of the proposed easement. However, based on our determination above, we need not reach this issue.

waiver for petitions for a board of view on damages under the Eminent Domain Code.

Notes of Testimony, Conference Entry Stipulation, May 29, 2007, at 7.

The preliminary objections clearly raise nothing more than issues of compensation, and Section 306 of the Eminent Domain Code, 26 Pa.C.S. §306(b), provides: “[i]ssues of compensation may not be raised by preliminary objections.” Thus, the trial court properly found that Condemnees’ preliminary objections fail as a matter of law.

Accordingly, the order of the trial court is affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 9th day of October, 2008, the order of the Court of
Common Pleas of Lycoming County is hereby affirmed.

JOHNNY J. BUTLER, Judge